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SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

COMPARISON OF RECOMMENDATIONS RECEIVED FROM PUBLIC WITNESSES

ON

MULTILATERAL TRADE NEGOTIATIONS' IMPLEMENTING LEGISLATION

TESTIMONY BEFORE THE SUBCOMMITTEE ON TRADE
APRIL 23 THROUGH 27, 1979

MAY 1, 1979

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FOREWORD

This Subcommittee print is designed to provide, on a timely basis, excerpts of testimony received from the public on the Multilateral Trade Negotiations during the week of April 23.

It is organized by MTN Code and other proposals, and contains specific recommendations made by various groups.

Because of time constraints, it does not include summaries of the various written statements received by the Subcommittee. This information will be provided to the Members separately. In addition, since this selection of comparative recommendations is primarily designed to assist the Members in the further drafting of the MTN legislation, it does not contain general discussions offered by the witnesses, etc.

Within the time constraints, this compilation attempts to summarize all recommendations received during the oral presentation to the Subcommittee.

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SUBSIDIES AND COUNTERVAILING DUTIES CODE

A. Time Period for Investigation

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.):

However, while we favor timely enforcement of countervailing duty and dumping legislation, we strongly urge that the maximum time limits not be shortened to the point where the chance of meeting the statutory timetable is reduced and/or due process is denied in an effort to comply with unrealistic deadlines. The current designation of 13 to 16 months for antidumping cases and the subsidy code's limit of 12 months for countervailing duty cases are reasonable maximum time periods as long as the statutory time limits are scrupulously met. In many cases shorter investigative periods would significantly reduce the quality of deliberations necessary to make often complex determinations of dumping, subsidies, injury and causation. This is especially true when verification is necessary. Shortened time limits will prevent effective verification of submissions. Although the countervailing duty limits recommended by this Subcommittee are preferable to those of the Senate Finance Committee, we respectfully urge you to reconsider and recommend the subsidy code's 12 month limit, as well as no change in dumping limits.

(Continued on next page)

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M. C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The time limit for reaching a preliminary determination in a countervailing duty proceeding should be 75 days from the date of filing the complaint.

Rice Millers' Association: J. Stephen Gabbert, Executive Vice President, Tony Coelho, M.C. (California):

The Rice Millers' Association also strongly supports the draft "Subsidies and Countervailing Measures" Code. The ease of access that the Code affords to private parties who are injured by subsidized imports will greatly improve the position of American traders in many commodities. Further, the Code's accelerated procedure will eliminate the high costs and continual uncertainty that currently attend efforts to compete with imported goods receiving bounties or grants. Of particular importance to U.S. rice exporters are the limitations placed by the Code on subsidies that displace U.S. agricultural products in third-country markets.

A. Time Period for Investigation

Consumers for World Trade:

In particular, we oppose more compressed time limitations governing various stages in proceedings arising under Countervailing Duty statutes. While the government's procedures may well need streamlining, and it is vital to assure prompt and fair determinations of complaints, we fear that the proposed accelerated investigations and rigid time limitations would seriously limit the opportunity to gather adequate data to conduct a fair investigation.

League of Women Voters: Ruth Robbins, First Vice President:

It would seem that "a reasonable opportunity" is best afforded everyone by a longer not shorter time period and, thus, the LWV would prefer that the legislation not establish a minimum investigation period that might only serve to encourage determinations based on inadequate information simply to meet statutory deadlines. What we want is a *good* decision, not just a decision. Of course, the investigating agency should proceed as rapidly as possible but the LWV urges that the committee thoroughly consider the benefits of allowing up to six months for a preliminary investigation with a final subsidy determination to come within 60 days of that and a finding on the question of material injury within 120 days of the preliminary subsidy finding. Based on other experiences with similar investigative proceedings, this would seem a fair

time period and still well within the one year limit established by the code itself.

Emergency Committee for American Trade: Lawrence C. McQuade (Senior Vice President, W. R. Grace & Co.)

Another concern that ECAT has regarding the subcommittee's tentative decisions on the subsidies code is with the time limits for fact-finding and decision-making. Most of us are frustrated with the time it takes our government to do things. It is all the more frustrating if one's business is being adversely affected while the government is making up its mind. We thus are most sympathetic with this subcommittee's desire to be helpful through shortening the time in which countervailing duty investigations and decisions are to be completed. Our caution is that shortening the period could well mean that the quality of the investigatory product will be worsened, that due process might be denied simply because of the lack of time and that unwise decisions could be made. Much of the information required for countervailing and antidumping duty decisions has to be acquired from abroad, in many instances from countries whose information-gathering facilities are poor. We, therefore, suggest that the subcommittee reconsider its tentative decisions in order to allow more time for investigations, particularly for antidumping cases. These cases generally involve several different foreign and domestic firms. Gathering necessary information from them is usually difficult and is always time-consuming.

American Importers Association: Richard A. Maxwell, First Vice President:

Shortened Time Limits. This Subcommittee has recommended that the time limits for conducting a countervailing duty investigation be reduced significantly. . . . In our opinion, the proposed time limits are inadequate to permit a complete and fair resolution of the case.

We recommend the following time limits:

1. Preliminary determination within six months;
2. Final determination within 60 days after the preliminary;
3. Withholding of appraisement upon a preliminary affirmative determination;
4. Following a preliminary determination, immediate referral to the ITC on the question of material injury with the ITC determination due within 120 days.

The shortened time limits tentatively recommended by Congress would make it impossible for information from foreign governments or foreign exporters to be collected and analyzed fully by Treasury prior to a preliminary determination. In the absence of adequate time to gather and analyze the facts, decision-makers will rely increasingly on their own personal bias. Such a result benefits neither the domestic industry concerned nor the importing community.

International Economic Policy Association: Dr. Samuel M. Rosenblatt, Senior Economic Consultant:

Efforts to expedite the processing of trade complaints are generally laudable. However, in an effort to achieve this, we must also make certain that ample opportunity is provided to those opposed to these complaints to develop an adequate defense or counter position. A legislatively imposed schedule that is too tight may preclude this latter possibility.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.:

In its press release of March 13, 1979 the Subcommittee tentatively agreed to reduce the time period for investigations from 1 year in the present law to a total period of 215 to 335 days. While in my opinion it may be feasible to conduct a countervailing duty investigation within a period of 215 days, I believe it will prove to be extremely difficult in all but the most simple cases. The Subcommittee's suggested time period would, . . . make it impossible for foreign governments or foreign industries to receive a decision on the merits at the preliminary determination stage of the investigation.

(Continued on next page)

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If, as indicated in your press release of March 13, there is to be verification of information submitted, even more time is required. In effect, the shorter time periods suggested by the Subcommittee would virtually guarantee that the preliminary determination in countervailing duty cases would be based on the information received from the complaining party as "best evidence" available. This fact, if accompanied by suspension of liquidation after the preliminary determination, literally guarantees that a complainant can, at least temporarily, completely disrupt trade in the products being investigated. The risk of trade in the product being investigated would be too great.

It is suggested that if any shortening of time periods in countervailing duty investigations is contemplated, that the period to be shortened is the period between the preliminary and final Treasury determination. In my view, and based on substantial experience, the preliminary determination should not take place until 180 days after initiation. Final determination could as a practical matter be accomplished within 60 days of that time, unless the investigation were a more complicated one. The ITC could receive the case after the preliminary determination and be given 120 days from that date to make its final decision.

B. Definition of Injury

Emergency Committee for American Trade: Lawrence C. McQuade (Senior Vice President, W. R. Grace & Co.):

The code itself, however, in a footnote on page 4 of the GATT text, notes that the term "injury" is taken to mean material injury in accordance with Article 6 of the GATT. It is our understanding that the subcommittee's tentative decision on the definition of injury does not specify the "material" test for injury. We recommend that in reconsidering this tentative decision the subcommittee either add the word "material" or consider a formulation that will make clear that injury determinations pursuant to the code should demonstrate that injury must be found to be important and consequential.

We do not make this recommendation for theological GATT reasons or for reasons of arguing definitional legalisms. Rather it is our firm judgment that other countries will emulate whatever is done here in formulating their own injury tests and their administration of the subsidies code. If the U.S. injury tests under this code are to be overly easy to meet, then so will be those of our trading partners. This potentially could be most harmful to U.S. exports, a consideration that cannot be overlooked.

Our recommendation here is doubly important since the injury test for the international dumping agreement will be the same as that for the subsidies code. Because the European Communities are now beginning to rely more heavily on their antidumping statute, the injury question becomes all the more crucial.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.) Stanley Nehmer (President, Economic Consulting Services, Inc.) Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

Statutory language should require that the injury test applied in countervailing duty investigations be no different than that applied under the Antidumping Act since January 3, 1975.

Some persons have argued that the injury test should be as rigorous as that required in "escape-clause" proceedings under Section 201 of the 1974 Trade Act. This argument ignores the fact that neither the international obligations of the United States in the new Code nor the need to deal effectively with unfair trade practices, warrant the creation of a higher threshold of injury than under the present antidumping law. There simply is no justification for making the definition of injury in unfair trade cases more stringent than that applied under the antidumping act.

We wish to be very clear and frank on this point. To require an "escape-clause" injury test under the countervailing duty statute would make the statute virtually unworkable as far as domestic petitioners are concerned.

American Importers Association: Richard A. Maxwell, First Vice President:

"*Material*" *Injury.* Both this Subcommittee and the Senate Finance Committee have deleted reference to the concept of "material" injury. We recommend that the implementing legislation use the term "material" injury, which should be defined as "important and consequential." Omission of the term "material" injury would violate the international obligation so recently undertaken in the Subsidies/Countervailing Duty Code.

League of Women Voters: Ruth Robbins, First Vice President:

In particular, the code specifies that "injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry . . ." U.S. countervailing duty law should therefore state clearly that it is material injury, meaning "important and consequential," not merely de minimis injury that is being tested.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Definition of "Injury". The implementing legislation should not provide that injury will be defined "as that term is used in the Agreement," since (i) the definition in the Agreement is vague and could be misinterpreted, and (ii) a reference to terms "as used in the Agreement" could be read to require that the U.S. legislation be construed in whatever way the GATT panels may interpret the Agreement over the years.

Since subsidies are by definition unfair practices, the adoption of an injury requirement by the U.S. would represent a major concession, departing from existing U.S. law. Any injury test should therefore not be defined in a manner which would present roadblocks to obtaining relief against unfair practices. Rather, the threshold to relief should be low. The use of terms such as "material" and "significant," as contained in some proposals, could be interpreted to impose a high threshold, and the definition should be redrafted to avoid such terms. Any injury formulation should be drafted so as to make clear that the subsidized imports need not be the principal cause, or a substantial cause, of an industry's injury, nor should the injury from subsidized imports be weighted against other factors which may be contributing to injure an industry.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.:

Injury. We strongly urge that the committee take into the U.S. law the expression "material" injury which has long been the standard of the GATT and which is now contained in the international codes. To decline to do so invites quite unnecessary discord with our trading partners who have long objected that the absence of the word "material" created an undue difference in the U.S. practice from that provided in the GATT and followed by other countries. We recognize that the United States has long maintained that it's actual practice is consistent with the expression "material" and we concede that there are many cases which permit this proposition to be defended. However, there are also cases of recent date in which it is not easy to defend this practice as meeting the standard of "material" injury.

The basic reason of course, for giving significant value to the expression "material" injury is the same as the reason that no doubt caused it to be originally used in the General Agreement. Namely, that it does not make economic sense to put a penalty upon importations into the United States at low prices, to the benefit of the American consumer, unless there is really a significant degree of prejudice to some producing sector of the United States economy.

The legislation should expressly provide that even a small impact from imports will be deemed sufficient to trigger a countervailing duty if an industry is already in economic difficulties. This is critical if the U.S. is to retain a diversified industrial base rather than being reduced to those industries which are healthy enough to survive in the face of unfair trade practices.

A Sec. 201 or 203 finding should be regarded as prima facie evidence of injury.

The legislation should also expressly provide that the various factors listed as relevant to the question of injury are not all-inclusive, and that all other relevant economic factors may be considered. (The code itself says as much.)

If Title V of the Trade Act is not repealed, a new arrangement should be developed to end the inequitable situation in which a product receives both a subsidy and GSP benefits and yet no countervailing duty may be applied unless an injury test is met.

Finally, and perhaps most important, any injury test should include a recognition that the nature of a subsidy and its probable effects are to be considered in determining injury. In particular, injury should be presumed in the case of an export subsidy, including disguised export subsidies.

In the last analysis, the application of this test implies a weighing of interests on the part of the International Trade Commission, and the public should not be denied the benefits of low priced imports unless there is a clear prejudice to a U.S. competitor. This applies equally to dumping or countervailing duty investigations.

Consumers for World Trade:

Most important, the more restrictive definition of injury in Countervailing Duty cases, does not appear to comply with the definition negotiated in the MTN Subsidies Code, and there seems to be serious doubt that our trading partners (especially the European Common Market) will accept language that does not require a showing that the alleged injury to American producers constitutes "material" injury justifying imposition of countervailing duties.

National Cattlemen's Association: Samuel H. Washburn Chairman, Foreign Trade Committee:

We object to the requirement of the injury test procedures proposed in the Subsidies Code for the following reasons:

1. Products that are produced or marketed under a governmental subsidy and are exported in competition with domestic products which are produced without subsidies or governmental regulations (except those for standardization, health and sanitation) constitute a prima facia case of injury to domestic producers and the United States should immediately impose countervailing duties to the extent of that subsidy.

2. Countervailing duties on subsidized products should be imposed unless and until the major producing and consuming nations grant access to their markets for United States products that is reciprocal and is at least equivalent to access that is allowed or guaranteed to the market in the United States.

If an injury clause is included in the final version of a Subsidies Code, due consideration must be given to the peculiarity and differences within agriculture and the livestock/meat business in particular as distinct from industry.

The cyclical inventory fluctuations make it virtually impossible for the cattle industry to be able to attribute losses or prove injury as proposed in the Code.

B. Definition of Injury

American Imported Automobile Dealers Association: Robert M. McElwaine, President; Fred O. La Fevers, Chairman; and Bart S. Fisher, Counsel:

AIADA salutes this Committee on its adoption of the material injury standard as part of the countervailing duty implementing legislation. The material injury test was a major concession made by the United States as a quid pro quo for other governments' restricting the use of subsidies. If this Committee had retained the proposal announced in its press release of March 19, whereby the de minimis injury standard of the Antidumping Law would have been adopted, then the Committee would have gutted a major U.S. concession.

Ferroalloys Association: George A. Watson, Executive Director, and Thomas M. Lemberg, Counsel

The Ferroalloys Association would deplore any amendment to the U.S. countervailing duty statute to require an injury determination for dutiable products. And, if an injury test is added, our industry would deplore an amendment permitting a subsidies investigation to be dismissed in its initial stages on injury grounds (as Code Article 2, Section 4 would provide).

Today, it is no secret that certain International Trade Commissioners persist in interpreting the injury criteria in the antidumping statute in a far more stringent way than Congress has (by statutory language and legislative history) clearly mandated. The addition of an injury test would give a Commissioner similar license in countervailing duty cases to impose upon a domestic industry a far greater burden of proving subsidy-caused injury than that specified in the words of any statute Congress enacts. . . . Any requirement that the injury proven be "material" would go a long way towards rendering the countervailing duty statute useless.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.):

The implementing legislation should clearly define both material injury and causation in order to provide greater certainty in the administration of the countervailing duty and antidumping laws. Such definitions should conform to the language of the codes and should not turn procedures designed to combat unfair trade practices into tools which encourage anticompetitive behavior.

The term "material injury" is the internationally agreed-upon language that we have accepted in the subsidy and dumping codes. It is only appropriate that it be included in the U.S. implementing legislation, along with the code's list of factors to take into account in determining injury. Material injury should be further defined as less than the "serious injury" required for escape clause actions, but greater than the minimal standard under current U.S. antidumping interpretations.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The legislation should not provide for a stricter burden of proof for complainants. The standard should simply be that the subsidized imports are a cause of injury.

If the trade pact requires the United States to provide for an injury test in its Countervailing Duty Statute, then this term should be defined as meaning anything more than immaterial or inconsequential.

B. Definition of Injury

American Iron and Steel Institute: Robert B. Peabody, President:

Definition of Injury. The injury provision in both the antidumping and countervailing statutes should be any injury which is more than immaterial or inconsequential. This is the test used by the ITC under the current antidumping statute.

Panel: Leather Wearing Apparel: National Outerwear and Sportswear Association: Morton Cooper, Past President; Morton Bauman, Executive Director; and Stanley Nehmer, Consultant:

The definition of injury should not be made more stringent than under the present antidumping statute.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs:

With respect to the definition of injury, we support the concept applied under the Anti-dumping Law since January 3, 1975. That is, the injury should be "not immaterial and not insignificant." A finding under Sec. 201 or Sec. 203 of the Trade Act should be regarded as prima facie evidence of injury.

Semiconductor Industry Association: George M. Scalise (Vice President-Administration and International Operations, Advance Micro Devices, Santa Clara, Calif.); Stanley Nehmer, Consultant, Peter B. Archie, Counsel:

We suggest that the injury standard in the new countervailing duty statute, the new antidumping statute, any amendments to Sections 201 and 301 of the Trade Act of 1974, and Section 337 of the Tariff Act of 1930, include provisions designed to assure prompt relief from the threat of future injury; make clear that a threat of injury alone is sufficient to award relief; and establish criteria which establishes a presumption of threat.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.

Definition of Net Subsidy. We submit that the definition of a net subsidy which is found in press release 14 (paragraph 5) is deficient and that regardless of provisions placed in the law, the discretion of the administering authority to determine the net subsidies should not be limited. It is difficult to conceive of all of the circumstances which may be applicable and which may cause the value of governmentally furnished aid to be affected. We are aware from our experience as practitioners of at least two situations in which Treasury Department discretion would be required. One is in the case where a nominal credit representing a percentage of the export value is given to the exporter and is usable only for the payment of certain taxes. In practice it has been demonstrated that many exporters are not able to utilize such credits and the real value to them of the subsidy is a small percent of the nominal value. Countries should have the opportunity to demonstrate such circumstances.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.) Stanley Nehmer (President, Economic Consulting Services, Inc.) Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

Our general view is that these offsets should be very few and defined precisely in order to prevent abuse of the types practiced by the Treasury Department. We believe that the Subcommittee has handled this matter well, except that included in the definition is the phrase, "direct and verifiable costs actually assumed" to qualify for the subsidy.

We do not know what that phrase means. We are most concerned, however, that it would allow the administering authority to deduct from duties directed against regional development subsidies many of the costs incurred in establishing facilities in depressed regions. Regional development subsidies to compensate for the comparative disadvantages of locating in such regions are extremely common and often equal a substantial fraction of the total cost of a facility.

Leaving this phrase in the definition of net subsidy would, we believe, leave a potentially very large loophole in the definition. We urge that the phrase be stricken from the definition.

We would suggest, therefore, that point 2 of paragraph 4 of the Subcommittee's press release number 14 should include loss in the value of the benefit resulting from the inability to fully utilize the benefit.

The other situation, one which the Committee may have intended to disallow, is offsets from indirect taxes levied directly on the product in the country of exportation which are allowable as rebates upon export under the GATT, but which are not organically related in the legislation of the exporting country to an credit which is granted. In this connection, we earnestly submit that to disallow these offsets is to create unnecessary discord with friendly trading nations * * *.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Amount of Duty. Countervailing duties should be in the full amount of the subsidy.

American Iron and Steel Institute: Robert B. Peabody, President:

In calculating the amount of a net subsidy, the allowable offsets should be limited and should relate directly to the subsidy benefit. The legislation should state that the burden of proving an offset rests with the party alleging the offset.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

1. The amount of the countervailing duty should be imposed in the full amount of the subsidy.
2. Procedures for settling a case in an amount less than the full amount should be prohibited.

C. Definition of Net Subsidy

American Importers Association: Richard A. Maxwell, First Vice President:

"*Net Subsidy.*" This Subcommittee and the Senate Finance Committee would impose limitations on the ability of Treasury to calculate the net benefit derived from certain subsidies. This would result in an overstatement of the actual subsidy received in some cases. These limitations would unfairly discriminate against developing countries which do not rebate indirect taxes upon exportation as permitted internationally, as well as against countries which give regional aid to offset proven cost dislocations. We recommend that the implementing legislation not limit the criteria for calculating the net subsidy.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.:

Suspension of Investigations. The provision for suspension outlined in press release number 11 is one of the potentially most valuable in the law. It is entirely appropriate that countervailing duty investigations should be regarded as economic issues arising between the United States and friendly foreign governments to be adjusted where possible by agreement between them. An opportunity should be provided in the law and in practice for resolutions which are consistent with the interests and needs of the exporting country and which avoid serious prejudice to the American producer. Such agreements may be quantitative limitations or other non-price undertakings which eliminate the possibility of injury. We would suggest that the Committee in terms of the law or the legislative history should also indicate that where we in fact already have quantitative limitations by reason of escape clause actions or special arrangements such as those that prevail so widely in textiles, there may well be no need for special measures under the countervailing duty law. It is very difficult for supplying countries to understand that, having been required as a condition of continuing to sell their goods to the United States to agree to quantitative limitations in the interest of avoiding injury to the domestic industry, they should also be subjected to countervailing duties. One form of protection should be sufficient.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Discontinuance or Termination of a Proceeding. (*a*) *Termination.* A proposal states that an investigation "will be terminated without imposition of provisional measures or countervailing duties if the Secretary determines that the net amount of the subsidy has been eliminated." Any provision of this nature is fraught with danger, and this formulation goes much too far. For example, if a subsidy has resulted in injury which would make a retroactive duty appropriate, that duty should surely be assessed regardless of whether the subsidy has subsequently been eliminated. In addition, a system under which an investigation would be terminated whenever a subsidy had been eliminated would induce foreign governments to grant subsidies, then eliminate them temporarily once an investigation was initiated, only to reinstitute them (perhaps in a new guise) after the investigation had been terminated. To avoid this, whenever a subsidy has been maintained, a finding to that effect should be made, and if it is determined that the subsidy has since been eliminated, provisions should be made for imposing a countervailing duty on an expedited basis in the event that the subsidy is reinstituted.

Finally, the Secretary's determination to terminate an investigation on the ground that the subsidy has been eliminated should be subject to appeal.

(b) *Discontinuance.* The proposal that an investigation may be discontinued on the basis of undertakings with respect to price or volume which are thought to eliminate "the injurious effect of the subsidy" is even more objectionable. In addition to the problems just discussed with respect to "terminations," this proposal would nullify the principle that duties are to be in an amount which will remove the full subsidy, not just the injury. The proposal would open a gaping loophole in the CVD provisions. Discontinuance should be permitted only with the approval of the affected domestic interests.

Panels: Leather Wearing Apparel: National Outerwear and Sportswear Association: Morton Cooper, Past President; Morton Bauman, Executive Director; and Stanley Nehmer, Consultant; Ralph Edwards Sportswear, Inc., Cape Girardeau, Mo.: Ralph Edwards, Chairman:

Oppose acceptance of assurances regarding price or quantitative limitations as bases for the termination of investigations.

American Iron and Steel Institute: Robert B. Peabody, President:

Discontinuance of a Proceeding. We agree with the concept that the U.S. Government should have the discretion to discontinue, when appropriate, pending antidumping or countervailing duty proceedings. However, to avoid an abuse of this discretion, proper safeguards must be structured in the statutes in order to condition the exercise of this discretion. It is our recommendation that the discontinuance, based on price assurances, of a pending dumping or countervailing duty proceeding should only be permitted when the price assurance eliminates the full amount of the net subsidy or the dumping margin. In addition there should be a published notice that a discontinuance is contemplated, thereby giving interested parties an opportunity to challenge the discontinuance. Further, once a discontinuance is granted on the basis of an assurance given by a foreign producer, Treasury or other administering agencies must monitor in order to ensure compliance. Penalties must be provided if a foreign producer defaults on the assurance.

Ferroalloys Association: George A. Watson, Executive Director, and Thomas M. Lemberg, Counsel:

Consider the provision that the countervailing duty assessed should be less than the amount of the subsidy if a lessor duty would remedy injury (Article 4, Section 1). And, consider the provision that any countervailing duty

finally calculated which exceeds the provisional calculation is, to the extent of the difference, not to be collected (Article 5, Section 6). If enacted, these and other provisions scattered throughout the code would unjustifiably weaken a statute of great importance to assuring that imports enter the United States fairly and by the rules.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs

We recommend that Congress limit administrative discretion in discontinuing investigations on the basis of assurances by a foreign government.

The implementing legislation should distinguish between direct or disguised export subsidies and domestic subsidies. For export subsidies, the Treasury Department should be permitted to suspend investigations only if the foreign government agrees to eliminate subsidy completely within six months, or to eliminate entirely exports of the subsidized goods to the U.S.

For domestic subsidies, we support allowing suspension of an investigation subject to the right of the petitioner, concerned labor union or trade association to appeal the decision.

To guard against violations of undertakings, it is essential to implement Article 4.3 of the Subsidies Code. This authorizes, in cases of violation of undertakings, the immediate application of provisional measures using the best

information available. If the final determination finds that a subsidy has caused injury to domestic industry, it should be mandatory to levy retroactive countervailing duties on imports entered during the 90 days before the application of provisional measures. Retroactive assessment should not apply to imports entered before the violation of the undertaking.

To prevent an exporting country from flooding the U.S. market with a subsidized article while negotiations on assurances are taking place, provisional duties should be assessed as soon as preliminary findings of the existence of a subsidy and of injury to domestic industry have been made. For non-signatory countries, no injury test should be applied as a condition of assessing provisional duties.

The law should state that the Secretary of the Treasury shall order the withholding of appraisal as soon as a preliminary finding has been made of the existence of a subsidy.

Panel: Leather Wearing Apparel: National Outerwear and Sportswear Association: Morton Cooper, Past President; Morton Bauman, Executive Director; and Stanley Nehmer, Consultant:

Whatever the merits of price assurances might be in connection with antidumping proceedings, we do not believe that there is a place for such assurances in the countervailing duty statute, particularly since the price assurances under consideration are those which would be sufficient to offset the injury not those to offset the amount of the subsidy.

E. Administering Agency

Panel: Leather Wearing Apparel: National Outwear and Sportswear Association: Morton Cooper, Past President; Morton Bauman, Executive Director; and Stanley Nehmer, Consultant; Ralph Edwards Sportswear, Inc. Cape Girardeau, Mo.: Ralph Edwards, Chairman:

For these reasons, the witnesses feel that the Treasury Department should no longer be permitted to administer the CVD statute. It was suggested that the Office of the Special Trade Representative, the Department of Commerce, or some new Department of Trade be given responsibility for administration of the CVD statute. Regardless of the chosen administering agency, the industry feels that the existing discretionary authority under the CVD statute should be substantially reduced by MTN implementing legislation, so that the intent of Congress be served in this area.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.) Stanley Nehmer (President, Economic Consulting Services, Inc.) Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

Certain Senators have proposed that a new Trade Department be created. We support that proposal. In any case, we urge that the administration of the fair trade statutes be removed from the Treasury Department and given to another agency, if only temporarily, until the Congress can determine which agency should have the administering authority permanently.

F. Discretionary Application of the Injury Provision

American Importers Association: Richard A. Maxwell, First Vice President:

The Senate Finance Committee tentatively has decided that any new law would apply only to those countries that, in the opinion of the President, have fully acceded to and are implementing the Code. We recommend that the injury provisions should extend to all countries that have acceded to the Code. The Code contains sufficient remedies to insure compliance with its provisions. Particularly, this section could operate to deny the injury provisions to developing countries. Those who have acceded to the Code have committed themselves to endeavor to reduce or eliminate export subsidies. This will be a painful transition process involving difficult judgments as to the proper pace. These judgments should be made in an international form—not through elimination of the application of the injury provision which would controvene the Code. If there is disagreement over the pace of these phase-outs, the United States still retains the right to apply countervailing duties if those subsidies are causing injury. If those subsidies are not causing injury, the application of countervailing duties to countries that have signed the Code would explicitly violate the provisions of the Code.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Martha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The injury test in the proposed legislation should be applied to imported goods from signatory countries.

G. Posting of Bonds as Condition for Filing Complaint

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc.), Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

This Subcommittee has agreed that petitioners should be required to post bonds or deposits of $1,000 at the time of filing.

We believe that it is wrong in principle to require the posting of any bond or fee to have the law enforced. Moreover, although the $1,000 bond may seem small, and certainly would not deter major corporations, it could prove burdensome to some small firms and unions. We recommend that this requirement be deleted altogether since frivolous petitions can be dealt with easily in other ways.

Panel: Leather Wearing Apparel: National Outerwear and Sportswear Association: Morton Cooper, Past President; Morton Bauman, Executive Director; and Stanley Nehmer, Consultant:

We believe it is unconscionable for any petitioner to be required to pay a fee to the Federal Government to secure the relief that may be prescribed under a statute. To do so would create a precedent of far-reaching proportions. In the case of a small industry such as ours, the requirement that we post $1,000 or $5,000 will effectively inhibit our future efforts.

H. Confidentiality of Submissions

American Importers Association: Richard A. Maxwell, First Vice President:

Both this Subcommittee and the Senate Finance Committee have recommended that confidential information be made available to counsel for interested parties under an administrative protective order. There is a real risk that, despite this protective order, highly confidential proprietary business information could be revealed to competitors. In order to insure that these proceedings are not used by petitioners as a discovery process, and to insure full responses to inquiries by foreign respondents, confidentiality of information should be totally preserved at the administrative level.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.:

The suggestion in the Subcommittee's release of March 13 that non-confidential summaries of submissions be available on request to any party and that counsel for interested parties could seek access to confidential information under an administrative court or protective order is disturbing. Putting aside the difficulty which will arise in making

public confidential government to government communications, implementation of the proposals in the press release will make the pursuit of investigations extremely difficult. As I am sure any Custom's or Treasury official will testify, current requirements of non-confidential summaries in antidumping cases have geometrically increased the complexity of these cases.

Dumping investigations are no longer impartial and objective proceedings carried out by the Department of Treasury, but quasi-adjudicative proceedings with all parties analyzing and commenting on other parties submissions, submitting volumes of data and counter data, preparing legal and factual arguments whether frivolous or serious, and with an abundance of lawyers submitting procedural and substantive protests. Increased access through the availability of a protective order would further and substantially complicate these cases. Furthermore, to insert an essential adjudicative procedure, the protective order, into a proceeding which is not governed by the Administrative Procedures Act and which, therefore, provides few if any procedural safeguards to parties submitting information, operates as a substantial deterrent to full cooperation with the investigative procedures and compromises the rights of parties seeking to import into the United States. In my opinion, and that of the lawyers working for our firm, the purpose of non-confidential summaries and disclosure by the Treasury Department to complaining parties has been to allow them to monitor the adequacy and legality of the Treasury Department's investigation. This has reached extremes, but nevertheless the process is still functioning. To allow opposing counsel access to confidential information will allow that counsel to function in the role prosecutor or plaintiff's counsel and will make these investigations into adjudicative proceedings without procedural safeguards. It is suggested that conducting countervailing duty investigations, or antidumping investigations, in an adjudicative manner is inappropriate. Countervailing duty investigations are essentially Government to Government proceedings which call into question practices which a foreign government believes to be appropriate in light of its own economy. This is not a problem which lends itself to an adjudicative resolution. With respect to both countervailing duty and dumping investigations, increasingly adjudicatives procedures act as a barrier to the interests of the domestic industry in a prompt decision and are contrary to the public interest in assuring full and fair decisions with a minimum of unnecessary disruption.

I. Agricultural Subsidies

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.):

The National Chamber has consistently argued that agricultural export subsidies should be prohibited in the same way that nonagricultural subsidies are. We are disappointed that the subsidy code fails to achieve this goal. Nevertheless we recommend clarification of two code provisions on agriculture. At a minimum, the code's provision that subsidies should not be used to gain more than an equitable share of world trade should not imply the freezing of market shares to a base period. Congress should make it clear that trade growth

derived from natural advantages and efficiency is legitimate. Shares acquired in the "representative period" as the result of export subsidies should not be considered "equitable shares."

Secondly, in order to clarify what is meant by "prices materially below those of their suppliers to the same market," the pharse should be defined in the implementation legislation as "prices which cause sales diversion or price disruption."

National Grange: Robert M. Frederick, Legislative Director:

The other major concern deals with the subsidy and countervailing duty codes. Our dairy members do not have faith in the fast track for determining injury from quota cheeses nor do they accept the injury test or the investigative time before countervailing duties on other non-quota dairy imports.

These are important questions for dairy farmers, questions that need answers if the trade package and implementing legislation are to secure the support of the dairy industry.

We believe that the best way to deal with fear among dairy farmers is seeing that our trade negotiators continue to press for improvements in the process of Congressional review and legislative history in the key problem areas:

The establishment of injury test criteria and strong administrative procedures within the subsidy CVD code which would fully assure U.S. dairy interests of prompt countervailing duty relief against unfair subsidy competition. Legislative history should be developed to assure carrying out the intent of the legislative language regarding the reduction of any detrimental effects of additional cheese imports on U.S. dairy farmers. This should include that any attempt by importers to circumvent the Sec. 22 quotas on new products would be dealt with in a swift and judicious manner. Further assurance should be given the dairy industry that the cheese quota under Sec. 22 would not be increased without detailed consultation with the representatives of the industry.

We would particularly suggest that the implementing legislative language regarding the subsidy and countervailing duty code or injury test now being considered by the subcommittee not be changed.

National Milk Producers Federation: Patrick B. Healy, Secretary:

In exchange for this "concession", the United States has agreed to amend its countervailing duty statute to require proof of injury before acting.

The addition of an injury test to the statute reverses the longstanding intent of Congress. This law has always been a means of preventing injury to domestic industry due to the export subsidy programs of other nations. With an injury test, it becomes a statute which permits, even requires, injury.

It has been argued that the injury test to be employed under countervail would be "soft" and that injury could easily be proven. Such assurances are counter to the experience the dairy industry has had in obtaining enforcement of the present, mandatory law. They fly in the face of the experience of other industries that have sought relief under the Antidumping Statute or in obtaining relief under other laws from unfair trade practices or import competition generally.

The U.S. has, frankly, been extremely reluctant to provide domestic industry of any type with the full protection of these laws.

Adding an injury test to the countervailing duty statute creates a situation under which a subjective judgment must be made regarding the occurrence of injury. It would be a simple matter for that judgment to be in the negative, at which point the domestic industry is without recourse irrespective of damage.

Arguments that changes in procedures involved in administering the statute will make it more effective and speed action are unconvincing. First, none of the changes—expedited handling, provisional relief—are precluded under present law. The law does not require Treasury to take 12 months to reach a decision; it requires that one be reached in a 12 month period. The law does not bar the suspension of liquidation of duties in a case under investigation. It just has not been done.

These changes could be made now, in all probability without further action by Congress. They do not constitute sound arguments for negating the effect of the statute. A countervailing duty statute with an injury requirement will, with the speed-up procedures suggested, simply be a faster means of saying "no" in situations that require the imposition of countervailing duties at present.

For the dairy industry, the presence of the dairy price support program virtually precludes the possibility of proving injury, as CCC will make product purchases sufficient to maintain a price level determined by the Secretary of Agriculture to be sufficient to produce an adequate supply of milk. Earlier, in discussions with U.S. trade negotiators, it was suggested that "interference with a domestic price support or similar program" would be one of the bases for proving injury. It is our understanding that such a provision was objected to by other nations and has not been included in the subsidies code. Even if it were, the problem of proving interference would be just slightly less than establishing injury itself.

The procedures recommended by the Subcommittee to prevent price undercutting due to export subsidization of dairy products covered by Section 22 quotas would appear to be an improvement over the countervailing duty statute with the addition of an injury test. This does not, however, remove the basic objection of the dairy farmer.

The fact remains that the use of the export subsidy has been specifically sanctioned and the U.S. government has officially accepted the position that it is all right to require domestic producers of a product to compete with the treasuries of other nations.

J. Definition of Subsidy

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

There should be a definition of subsidies for purposes of the U.S. countervailing duty law. The definition proposed in S. 538 is an appropriate subject for consideration in this regard. Even if it were proper to leave this matter to regulations, it violates the spirit of § 102 of the Trade Act not to indicate what the regulations would say.

In light of the fact that an understanding has apparently been reached that DISC will not be regarded as a subsidy even though it clearly is a subsidy within the terms of the Code, it is imperative that

we be given a full explanation of any negotiations which have occurred with respect to which foreign practices will or will not be regarded as subsidies by the U.S.

We submit that rebates of value-added taxes should plainly be treated as subsidies under the U.S. countervailing duty law.

The application of countervailing duty provisions in the context of non-market economies is a critical matter. The implementation package should spell out plainly how the U.S. will apply its countervailing duty law to non-market economies.

American Iron and Steel Institute: Robert B. Peabody, President:

The implementing legislation should broadly define both export and internal subsidies.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The statute should provide a definition of "bounty or grant" that incorporates the illustrative list of subsidies contained in the trade pact's subsidy code and that also provides an analytical device for identifying new forms of subsidization.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.):

Any definitions or illustrations of what constitutes a subsidy should be carefully drawn considering the possibility that other countries will emulate our definition to exclude U.S. exports. "Bounty or grant" should be defined so as to authorize imposition of a countervailing duty only when the foreign government program has an adverse effect on the trading interests of other countries.

K. Judicial Review

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Final determinations may be appealed. This should be corrected, and the provisions should make clear that in the case of an affirmative final determination, an affected union or domestic producer who believes that the amount of the duty is too low will have standing to appeal.

Any negative determination, discontinuance, or termination of an investigation should be subject to judicial review.

Any matter which may be appealed by other affected interests should likewise be appealable by unions.

* * * * * * *

The bill should provide generally that no rights or obligations created by the code or by the implementing legislation may be enforced except as provided in the legislation. In addition, there should be a provision which unambiguously forecloses suits in U.S. courts (federal state or local) based on any claim that a U.S. practice violates the Subsidies Code or the implementing legislation. It should also be provided that government procurement of an article which is claimed to have received a U.S. subsidy may not be challenged on that basis.

Congressional Steel Caucus:

Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

Various determinations should be subject to judicial review.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs:

Under the administration's proposal, several critical stages in the countervailing duty procedures are not stated to be subject to appeal.

Final determinations should be subject to judicial review, and in the case of an affirmative final decision, an affected labor union or domestic producer that believes the amount of the duty is too low should have standing to appeal.

Any negative determination, discontinuance or termination should be subject to judicial review.

To foreclose suits in U.S. courts against U.S. practices, the legislation should provide that no rights or obligations created by the Subsidies Code (or any other code) or by the implementing legislation may be enforced except as provided by the legislation.

In addition, there should be a provision that unambiguously forecloses suits in U.S. federal, state or local courts based on any claim that a U.S. practice violates the Subsidies Code or the implementing legislation. The law should also state that government procurement of an article which is alleged to have received a U.S. subsidy may not be challenged on that basis.

L. Causal Link

Emergency Committee for American Trade: Lawrence C. McQuade (Senior Vice President, W. R. Grace & Co.):

Our final comment on the subsidies code has to do with the terminology describing the relationship between foreign subsidies and injury to domestic producers. The code itself only calls for "a causal link".

Our concern with this wording also has to do with the international dumping code, which is to be brought into harmony in this and in other respects with the subsidies code. The international dumping code presently requires that for remedial action to be taken dumping must be found to be a "principal" cause of injury. In conforming the international dumping code to the just-negotiated subsidies code, the "principal" test will be dropped, meaning that it will be easier for governments to apply dumping duties. And, as noted earlier, the Europeans are placing heavier reliance on their antidumping regulations.

What we recommend is a future effort by U.S. negotiators to seek to renegotiate the subsidies code for the purpose of adding "substantial" to the causal link. This would apply both to countervailing and to dumping cases. If this could be accomplished, then the implementing legislation could be subsequently amended to include the "substantial" link of causality. We do not recommend that the Congress add

"substantial" at this point since to do so would bind only the U.S. government. As I said, the international subsidies code itself only calls for "a causal link".

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBC, Inc., Boston, Mass.):

Therefore, the implementing legislation should establish that the dumped or subsidized imports must be a "substantial" cause of injury before dumping or countervailing duties are imposed.

American Iron and Steel Institute: Robert B. Peabody, President:

The addition of an injury test to the countervailing duty law should not result in a causation standard more stringent than the current antidumping statute test.

M. Originators of Complaints/Basis of Complaints

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs:

We strongly support the right of labor unions to have full equality with importers, exporters and U.S. producers in all procedures under the subsidies/countervailing duty law. Labor unions should have the right to file complaints, and notice of a decision to initiate an investigation should be sent to unions which have an interest.

The legislation should either provide that affected labor unions should be deemed parties to the complaint and parties to the investigation, or provide a mechanism by which unions may obtain that status upon request at any stage in a proceeding.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Status of Unions in Countervailing Duty Proceedings. We strongly support the right of unions to file CVD complaints. It is imperative that interested unions should have all the procedural rights that are accorded to other groups, such as importers, exporters, and other U.S. producers. Thus, the legislation should either (i) provide that affected unions shall be deemed "parties to the complaint" and "parties to the investigation," or (ii) provide a mechanism by which unions may obtain that status upon request at any stage in a proceeding.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbar A. Mikulski, M.C. (Maryland):

The legislation should provide that unions will have the right to file complaints and that a notice to initiate an investigation will be sent to any union having an interest in the investigation.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

A complaint need only provide a "reasonable indication" of subsidy and injury, on the basis of evidence that is "reasonably available to a complainant," is appropriate and important. The same standard

should govern the initiation of an investigation by the government on its own motion.

N. Government Monitoring of Subsidies/Initiation of Action

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer. Assistant to Director of International Affairs:

For these reasons, we recommend that Congress require the Office of the Special Trade Representative (STR) to compile, and make available to the public information on foreign subsidy programs, and that all federal departments and agencies be required to forward to STR any information they acquire on such programs. The legislation should require the government to initiate an investigation on its own motion when information is obtained on the existence of a subsidy.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Reporting of Foreign Subsidy Practices. Provisions requiring the government to obtain and disseminate information regarding foreign subsidy practices should be included in the legislation, not just the regulations, and the details of the provisions should be made available as soon as possible.

Investigations Self-Initiated by the Government. The legislation should require, not just permit, an investigation to be initiated by the government on its own motion when appropriate information is obtained.

Congressional Steel Caucus: Joseph M. Gaydos, M. C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M. C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana) Barbara A. Mikulski, M.C. (Maryland):

The legislation should expressly and clearly require the U.S. government to seek and disseminate information on subsidization practices by foreign governments.

If the government obtains information that foreign subsidies exist, it should be required by legislation to initiate an investigation.

O. Definition of "Industry"

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

(a) *"Like or Directly Competitive."* Experience affecting industries such as footwear, consumer electronics, garments, and steel products has proved that it is critical that the effect of subsidies both "upstream" and "downstream" be considered and remedied.

(b) *Regional Industry.* The reference in the proposed legislation to a region that constitutes "an isolated market from other regions of the United States" is unnecessarily narrow, as well as unrealistic. The concept of a regional industry may appropriately be applied whenever producers of the domestic industry for a class or kind of merchandise are located in a particular geographic area and primarily serve the market in that area, and imports have been concentrated in that area, even though a major part of the U.S. industry is not injured.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.):

The time allotted for preliminary determinations becomes particularly crucial if provisional dumping and countervailing duties are to be assessed after a preliminary positive determination. Although we favor suspension of liquidation at that point, provided there has been enough time to make a reasoned determination, the posting of a bond should provide sufficient assurance of an effective remedy. The amount of the duties can only be a rough estimate after the preliminary investigation, and a requirement that full estimated duties be paid in cash could seriously disrupt trade.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

Legislation should require provisional duties in the form of cash deposits equal to the amount of the subsidy to be made after an affirmative preliminary determination.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Retroactive Duties and Provisional Measures. The circumstances in which retroactive duties may be assessed need definition. In addition, such duties may be assessed with respect to unappraised imports, and there should be a provision for withholding of appraisal. Provisional measures should not entail merely the posting of a bond. Instead, the full estimated duty should be collected and placed in escrow. This would remove an incentive for delay on the part of importers and foreign manufacturers.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.

Provisional Measures. Our comments on provisional measures in connection with dumping amendments—that there is no justification except a punitive attitude—also apply to such measures in connection with countervailing duties.

American Importers Association: Richard A. Maxwell, First Vice President:

Provisional Bonding or Cash Deposits. This Subcommittee has recommended that provisional measures can be applied at the time of a preliminary determination in the form of a special entry bond for each entry or a cash deposit. These provisions would unnecessarily penalize importers prior to a final determination of these matters. Moreover, such measures are unnecessary to protect the revenue, which can be protected adequately by merely extending the general term bond coverage to cover such provisional duties.

Q. Application of CVD to Less Developed Countries

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

The AFL–CIO would like clarification as to whether the countervailing duty provisions would apply to imports from less developed countries in the same manner as they apply to export subsidies of developed nations. For example, would countervailing duties be assessed against subsidies of a less developed country which has not violated its "phase-out" commitments under Article 14 of the code? The AFL–CIO's view is that a subsidy should be the subject of a countervailing duty regardless of whether a developed country or a less developed country is the source of the product.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs:

One of the objectives of the legislation should be to create strong incentives for less developed countries to adhere to the Subsidies Code. Accordingly, the legislation should specify that no injury test will be applied in subsidy cases involving non-signatory countries, for both dutiable and non-dutiable merchandise, including articles granted duty-free treatment under the Generalized System of Preferences (Title V of the Trade Act). For signatory countries, the law should make clear that, upon a finding of injury to a domestic industry, countervailing duty should be assessed on a subsidized article imported under G.S.P.

R. Miscellaneous Points

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Reconsideration of CVD Orders. On the one hand, there obviously must be a mechanism by which the amount of a countervailing duty may be modified as the amount of the subsidy changes—although to the extent possible, the terms of the CVD order itself should be drafted with a view to that matter, and should provide for automatic adjustments in the amount of the duty in certain circumstances. On the other hand, however, the mechanism for modification of orders should not provide a route by which elimination or reduction of duties may be obtained without the full procedural protections which apply to the initial CVD order. And any substantial modification of an order should be subject to judicial review. At most, an investigation should be undertaken only if the Secretary has received persuasive evidence that the industry is no longer subjected to injury, threat of injury, or retardation. Moreover, an investigation "should not be undertaken until at least 18 months following the publication of the last injury determination." And the legislative history should emphasize that because subsidies are unfair practices, U.S. policy is that once a subsidy has been shown to have caused injury as defined in U.S. law, the U.S. objective is elimination of the subsidy, not just the injury.

"Best Available Evidence" and Reliability of Data. The legislation should clearly permit the use of best available evidence if, for example,

a party provides information which is found to be unreliable. Moreover, the legislation should provide that the Secretary and the Commission should verify the reliability of information received before the information is given weight.

Transition Rule. To require injury investigations of all outstanding countervailing duty orders, as proposed by STR, would result in great instability and uncertainty, and would place an excessive burden on the Commission. Those orders are valid, and should not be placed in limbo. Injury investigations should be commenced with respect to outstanding orders only if the Secretary receives positive evidence that no injury, threat of injury, or retardation of a domestic industry exists.

Definition of "Imported". The terms "area of production" and "imports through other countries" should be clarified.

Assessment Process. There should be a time limit on liquidation of merchandise imported under a CVD order, with improved rights on the part of domestic interests to be informed of decisions made in the assessment process and to comment on or challenge such decisions.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs:

Domestic interests should have improved rights to be informed of decisions made in the assessment process, and to comment on or challenge such decisions. There should be a time limit on liquidation of merchandise imported under a countervailing duty order. Congress should take this opportunity to do everything possible to avoid the kind of administrative breakdown that occurred in the Treasury Department's handling of the color television dumping case.

International Economic Policy Association: Dr. Samuel M. Rosenblatt, Senior Economic Consultant:

We should guard against the recurrence of instances of multiple jeopardy, such as occurred recently in the case of TV imports, from the simultaneous filing of a number of petitions for import relief. This involves some clarification of the relationships among petitions filed under Section 201 of the Trade Act, the Antidumping Act of 1921, as amended, the countervailing statute of the Tariff Act of 1930, as amended by Section 331 of the Trade Act of 1974, unfair trade provisions of Section 337 of the Trade Act of 1930, as amended, and under Section 301 of the Trade Act of 1974.

International Service Industry Committee of the Chamber of Commerce of the United States: Ronald K. Shelp, Chairman (Vice President and Director, American International Group):

The subsidies code, proposed as a potentially appropriate vehicle for dealing with service industry problems by the Inter-Agency Task Force, contains no reference in the text to services. Relevant questions are:

What efforts were made to include services in the subsidies code and what circumstances precluded such consideration in the final agreement? and,

Is the subsidies code susceptible to the eventual coverage of subsidies to services in international commerce (for example under Article 19,

Section 7) and, if so, what basis? If not, what efforts are planned by the STR to pursue the issue and what response is anticipated from trading partners?

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.):

Certain Tax Practices. It is unfortunate that the subsidy code proved unable to deal with a variety of direct and indirect tax matters. Congress should direct the Administration to continue active international negotiations on these issues. Furthermore, the implementing legislation should make it clear that pending the successful conclusion of such future negotiations, it is the understanding of the United States that the subsidy code will not prejudge certain direct tax practices of the United States or of other countries, particularly the U.S. Domestic International Sales Corporation (DISC) provisions, which are the subject of pending action under GATT.

ANTIDUMPING

A. Timing of Proceedings

American Importers Association: Richard A. Maxwell, First Vice President:

We recommend, based on the nature of the antidumping process and recent GAO study, that there be no reduction in the time permitted to conduct an antidumping investigation. Specifically, by reducing the time allowed for a preliminary determination, it would not be possible in the ordinary cases for information to be received and analyzed fully prior to a preliminary determination. As with countervailing duties, the absence of adequete time will force decision-makers to rely increasingly on personal bias. This benefits no one.

Consumers for World Trade:

In particular, we oppose more compressed time limitations governing various stages in proceedings arising under Anti-dumping.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

A preliminary determination on an antidumping complaint should be made no later than 120 days from the filing of the complaint.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc.), Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

We believe that the time limits should be shortened somewhat, although unrealistically tight time limits could be damaging to everyone concerned. Much of the administration of the fair trade statutes centers on good management practices and devoting sufficient resources to the job. We urge that the Congress see to it that the agency administering the fair trade statutes has sufficient resources—and uses them—to do the job properly.

Charles O. Verrill, Jr., Patton, Boggs & Blow, Washington, D.C.:

I am concerned as a practioner that the time limits may be so shortened that it will not be possible to be an effective advocate for either side. This is particularly so in constructed value determinations where the issues are often complex and require detailed study and analysis.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.:

My comments in regard to proposed time limits in countervailing duty investigations apply to antidumping investigations with few exceptions. An antidumping investigation is a complex proceeding involving an extensive analysis of prices, selling costs, differences in merchandise, differences in circumstances of sale and, in most cases some elements of production costs. Preparing a response to an extensive Treasury questionnaire alone requires 30 to 45 days. If one adds to this two weeks for preparation of an appropriate questionnaire by Treasury, a week for verification and the preparation of a verification report, adequate time for Customs to analyze the data and decide major issues, and time for the Treasury review process, it is clear that six months is required for a tentative determination.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

The implementing package should strengthen U.S antidumping legislation by speeding up the procedures and providing better assurance of relief.

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While the proposals shorten some of the procedural time limits in the statute, they cut back on the statutory authority to impose retroactive duties and retroactive withholding of appraisement. Thus, despite the speedier proceedings, actual relief would amount to less and would be less timely than the present U.S. law permits. In addition, the provisional relief authorized by the proposals consists of no more than a requirement of posting bond.

A. Timing of Proceedings

It is perhaps difficult to expect individuals not directly involved in the process to realize the complexity of these investigations. Let me attempt to explain by drawing on a concrete example, the investigation of motorcycles from Japan. In this case alone, the submissions by all parties, including responses to questionnaires, correspondence with Treasury, and briefing of issues during the Treasury phase would, if piled one on top of the other, be taller than a normal man. On one issue alone, adjustments to reflect differences in the merchandise sold in the U.S. and Japan, a technical expert had to compare virtually each and every one of more than 100 motorcycle models sold in the United States with the most similar models sold abroad to determine the basis for appropriate adjustment. The Customs Service had to examine the prices and adjustments for literally hundreds of thousands of sales. The Treasury Department had to evaluate and decide numerous legal and factual issues such as the existence of a model year in the motorcycle industry, the treatment of various selling costs, and the application of regulations to novel adjustments. The proceeding as a whole could not have been more thorough and could not have been completed in less than one year without seriously compromising the interests of both the domestic industry and the importers. To be sure, all investigations are not so complex.

However, complex investigations are the rule today, rather than the exception. To legislate unrealistic time

limits serves no interest, but only results in arbitrary decisions which are as damaging to the interests of the U.S. industry as they are to importers.

In summary, any change in the time limits for the Treasury phase of an antidumping investigation would seriously undermine the functioning of the statute.

Automobile Importers of America, Inc.: Ralph T. Millet, Chairman of the Board; and John B. Rehm, Special Counsel:

The IAC does not prescribe the amount of time an antidumping proceeding shall take. Its provisions make it quite clear, however, that the governmental authorities concerned shall make a full and thorough investigation of the facts and that the parties to a proceeding shall have a full opportunity to present their views. The Act now allows 13 months for a typical antidumping proceeding—7 months for the preliminary determination with respect to sales at less than fair value (LTFV), 3 months for the final determination, and 3 months for the injury determination.

The Senate Finance Committee has decided to recommend a total time period of 8 months—4, 2½, and 1½. This is seriously inadequate, both in terms of the total time allowed and in terms of the time provided for each of the three stages. 6 months from the date of the filing of the complaint is the absolute minimum time in which to make a preliminary determination with respect to sales at LTFV. Within this time, the complaint must be found to warrant an investigation, responses to questionnaires

must be received from abroad, the responses must be verified abroad and then analyzed, supplemental information must be obtained, and factual and legal issues must be resolved. If 6 months are allowed for the preliminary determination, AIA believes that 2 months is sufficient for the final determination, but at least 2 months must be allowed for the injury determination following the final determination of sales at LTFV. Only after the final determination concerning sales at LTFV, can an informed determination be made whether the imports sold at LTFV are the cause of whatever injury the domestic industry may have suffered. Two months is needed for this purpose, particularly in order to give the parties to the proceeding a reasonable opportunity to address the issue of causality.

Richard O. Cunningham, Steptoe & Johnson, Washington, D.C.:

Most of the proposals advanced for reform of the Antidumping Act—including the STR proposal for implementation of the new Antidumping Code—feature substantial reductions in the period of time allotted for the Treasury investigation of LTFV pricing. I want to make it clear to this Committee that any such change will work to the disadvantage of complaining U.S. industries.

Ironically, these proposals are said to be advanced on behalf of potential U.S. complainants, in the interest of "expediting" the obtaining of relief under the Act. Although the desire for quicker relief is certainly under-

standable, these investigation-shortening proposals are misguided for reasons which I will discuss in a moment. If quicker relief is deemed desirable, I suggest that it could best be obtained by overlapping the Intetrnational Trade Commission investigation with the second phase of the Treasury Department investigation. Under such an overlapping procedure, the ITC would begin its investigation at the date of Treasury's tentative determination (assuming that that determination is affirmative) and would continue its investigation for four months, until one month after Treasury's final determination. The extra month after Treasury's final determination is necessary in order to permit the ITC to consider the final dumping margins. Such an overlap procedure would shorten the total investigative period by two months. If this is not deemed sufficient, consideration could be given to withholding appraisement at some earlier point in the Treasury investigation, perhaps at the three month date, conditioned upon Treasury determining that there is substantial evidence of LTFV selling.

The difficulty with shortening Treasury's investigation is that such shortening will prevent complainants from winning many dumping cases. In any but the most clear and egregious case, whether a complainant wins or loses is primarily dependent upon the ability of its counsel to persuade Treasury to reject the initial contentions made by the foreign producers and gather new (and more detailed and more accurate) price and cost data. Consider the following typical time schedule in a dumping investigation:

The Customs questionnaire is served upon the foreign producer a few days after the commencement of the investigation.

The foreign producer submits its response to the U.S. embassy located in the country of exportation about nine or ten weeks after receipt of the questionnaire, so that now about two and a half months have passed in the investigation.

That questionnaire response is subjected to preliminary review at the embassy and in Washington, and the verification of the response usually does not take place until after the three month point in the investigative period.

After verification, the Verifying Officer prepares his report, which is generally submitted to Customs in Washington a week or so before the four month point of the investigation.

There is then a two or three week delay (at least) before the vertification report is "sanitized" (i.e., confidential data is removed) and placed in the public files so as to be available for inspection by counsel for the complainant.

At this point, almost five months of the initial six month investigative period have elapsed, and only now does the counsel for complainant have access to all of the data necessary to analyze the foreign producer's questionnaire response.

As the foregoing scenario demonstrates, it is not until 4½ to 5 months into the investigation that the issue is

really joined. Only at that time can complainant's counsel analyze the questionnaire response, question various portions of it, and urge Customs to seek additional information where necessary. Even today, with a six month period until the tentative determination, it is often not possible for Customs to obtain needed additional data in time for use in that first decision. It is small wonder that Treasury misses so many of its deadlines for both tentative and final determinations, and small wonder that there are so many changes in LTFV margins between tentative determination and final determination.

Conceivably, the use of additional resources at Customs could expediate the above scenario by two weeks or perhaps even a month—but not more. Even then, the original six month investigative period should be kept in effect, to allow Treasury time to obtain additional data at the urging of complainant's counsel, where such data is necessary for the decision.

Who will be the loser if time periods are shortened to the point where Customs is not able to obtain additional data at the urging of complainant's counsel? Obviously, the losers will be U.S. complainants. Treasury decisions will be based, not on full and accurate data, but rather upon the foreign producer's initial and sometimes faulty submissions. In other words, cases will be lost where they should be won.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc., Donald deKieffer (Collies, Shannon, Rill, Edwards & Scott):

First, the determination of injury. Much of what we said about this matter in discussing the countervailing duty statute is relevant here. There should be no change in the test that has been applied since January 3, 1975.

Automobile Importers of America, Inc.: Ralph T. Millet, Chairman of the Board; and John B. Rehm, Special Counsel:

Quantum of Injury: Both the IAC (13(a)) and the subsidies Code (121 footnote 1), like Article VI of the GATT itself, provide that the requisite quantum of injury be "material". But the Act only asks whether a domestic industry "is being or is likely to be injured".

The Act should therefore be amended to require that the domestic industry is experiencing at least "material injury". Moreover, the legislative history should make clear that "material injury" means injury that is important and consequential, consistent with the dictionary definition of "material".

At present, the International Trade Commission (ITC) generally interperts the Act to require a quantum of injury that is only slightly more than de minimis—or a trifle more than a trifle of injury. This is not only legally

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Codification of the definition of "injury" contained in the Senate Finance Committee's report accompanying the Trade Act of 1974.

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The term "injury" should be qualified as meaning anything more than immaterial or inconsequential.

Westinghouse Power Systems Company: Gordon C. Hurlburt, President:

Another proposal is for Congress to write into U.S. law the GATT concept of "material injury", thus changing both the U.S. Antidumping Act and Countervailing Duty Act. I urge this committee and the Congress to insist that the implementing legislation, or that the legislative history, make it clear that this language is intended to work no change in our present law—and particularly that it will create no higher standard of what causes injury than the present law and practice under the Antidumping Act.

I will not repeat testimony you have already heard from

wrong, in that it contravenes our international obligation under the IAC, but it is also economically unsound, since the Government should intervene in the marketplace only when a domestic industry is injured to a significant or important degree. Governmental intervention should be and remain exceptional, if we believe in the benefits of competition. It therefore follows that such intervention should be limited to those cases where significant or important injury is afflicting the domestic industry in question.

Threat of Material Injury. The IAC (13(e)) provides that the threat of material injury shall be based on facts and not merely allegation, conjecture, or remote possibility, and must therefore be clearly foreseen and imminent. The definition of injury in the Subsidies Code (121 footnote 1), on the other hand, includes "threat of material injury", but it does not define "threat". Similarly, the Act refers to the likelihood of injury, but without any definition of likelihood.

The Subsidies Code and the Act should therefore both be amended to incorporate the definition of threat in the IAC. A threat that is not clearly foreseen and imminent should not call for the imposition of extraordinary duties.

American Imported Automobile Dealers Association: Robert M. McElwaine, President; Fred O. La Fevers, Chairman; and Bart S. Fisher, Counsel:

AIADA supports the incorporation of the material injury test into U.S. antidumping law.

Others on the Antidumping Act proposals: I want to strongly endorse the testimony of Mr. Richard Cunningham on April 23rd. He is very familiar with the problems of our industry in this area.

Richard O. Cunningham, Steptoe & Johnson, Washington, D.C.:

This issue is particularly important because the ITC has already significantly increased the requisite level of injury beyond that prescribed by Congress in 1974. Adoption of the new Antidumping Code—with its requirement that injury be "material"—will accelerate this trend, unless Congress issues a clear statement as to the necessary quantum of injury.

Yet this is just what the Administration does not want Congress to do. In the Geneva negotiations, they have accepted Codes on both dumping and countervailing duties which require showings of "material" injury. While those Codes do not contain any definition of what "material" means, there is no doubt that the European and Japanese negotiators regard "material" injury as a higher standard than now exists in the U.S. Antidumping Act. Indeed, our trading partners have long criticized the U.S. precisely because our dumping injury standard was lower than the "material" injury requirement of the International Antidumping Code (which the U.S. has never, until now, unqualifiedly adopted).

B. Injury

The situation, therefore, is as follows. The Codes require "material" injury. They don't define "material," but other countries interpret it as an increase in our Antidumping Act standard. And those other countries have achieved a situation where they are going to hold off their ratification of the Codes until after they see what Congress does with this and other issues in the implementation process. The Administration fears that if Congress defines "material," it will define it as being no change from the standard which the Congress enunciated in 1974—i.e., any injury "which is more than frivolous, inconsequential, insignificant, or immaterial." That interpretation, they fear, might offend the European and Japanese negotiators.

So the Administration is urging that Congress say nothing about the required quantum of injury, leaving this issue to the administrative interpretation of the International Trade Commission. But what I want to be sure this Committee understands is that the consequences of that abdication of decisionmaking will be:

First, to give tacit approval to an increase in the quantum of injury which has already been adopted by the Commission, and

Second, to ensure that the trend toward an even higher standard will continue as "material" injury becomes the criterion.

The inevitability of these two consequences is apparent from an analysis of the history of this issue:

The administrative interpretation which Congress ap-

proved in 1974 had its origin in the analysis of the law by Commissioner Clubb in the 1967 decision of the Commission in Cast Iron Soil Pipe from Poland. After analyzing the legislative history of the 1921 Act and concluding that Congress intended only the most minimal of injury tests, Commissioner Clubb went on to demonstrate that Congress in 1951 had specifically determined that "material" injury was too restrictive a test:

The subsequent history of the Act tends to confirm that dumping duties are to be applied in response to anything more than trifling injury. In 1951 the Administration sponsored a bill (H.R. 5505) which, if enacted, would have required a finding that a domestic industry was being "materially injured," rather than merely "injured." This provision was stricken by the House Ways and Means Committee which noted in its report that,

"The Antidumping Act now provides for imposition of antidumping duties when American industries are being 'injured' by certain imports, section 2 as introduced in H.R. 1535 [H.R. 5505 was introduced as a clean bill] would have changed 'injured' to 'materially injured.' The Committee decided not to include this change in the pending bill in order to avoid the possibility that the addition of the word 'materially' might be interpreted to require proof of a greater degree of injury than is required under existing law for imposition of antidumping duties. The committee decision is not intended to require imposition of antidumping duties upon a showing of frivolous, inconsequential, or immaterial injury." [H.R. Rep. No. 1089, 82nd Cong., 1st Sess. 7 (1951).]

B. Injury

The Commissioner went on to state specifically the quantum of injury required under this Act: " . . . frivolous, inconsequential, or immaterial injury would not call for application of dumping duties, but anything greater would."

These, of course, are the same terms which the Committee on Finance adopted with approval in 1974. In so doing, therefore, the Committee was specifying an injury test which is less than "material" injury, just as Commissioner Clubb had done seven years before. If Congress now approves a Code containing a "material" injury standard, that can only be interpreted as a raising of the injury requirement--unless Congress states clearly that it does not desire such an interpretation.

It is certainly clear that the Commission is strongly inclined toward an increase in the injury requirement. Since 1974, in fact, the Commission has not been following the Congressional standard of "more than insubstantial," but has instead been requiring an increasingly higher quantum of injury. Even in those cases where lip service is given to the "more than insubstantial" or "more than de minimis" standard, it has been evident to most observers that the standard has in fact been significantly higher. As a consequence, a higher percentage of cases are resulting in "no injury" determinations.

One particularly clear manifestation of this new approach to the injury issue is the Commission's requirement

today that the affected U.S. industry show performance trends which are actually declining. As everyone knows, the last two years have been strong years for the U.S. economy. In such an economic climate, most U.S. industries can normally be expected to be enjoying rising sales, profits, employment, etc. In some industries, however, domestic producers argue that dumped imports have deprived them of much of the benefit which they had every right to expect from these rising trends in the economy. Although the U.S. producers' profits, sales and other indicators may well have been stable or even rising slightly, they point out to the Commission that LTFV imports have captured an increasing share of their markets and have deprived them of the substantially larger gains in sales, profits, etc. which they otherwise would have enjoyed. In the 1960's and early 1970's, such an argument—if properly substantiated—would have resulted in an affirmative injury determination. Today, that is not the case. Rather, the Commission is likely to find that the U.S. industry is not "injured" unless its performance indicators have actually declined.

My point here is not that Congress should reduce the injury standard, or that Congress should raise the standard. My point is that Congress should make the decision and not abdicate its authority. And I want you to realize that if you say nothing, the result will be a much stiffer injury test. Indeed, that will also be the result if Congress adopts the approach taken by this Subcommittee in its Press Release No. 14 (issued March 10) with respect to the "material" injury test in the Subsidy/Countervail Code:

B. Injury

"The Subcommittee agreed that statutory language should express the Congressional intent that the injury test applied in countervailing duty investigations be no different than that applied under the Antidumping Law since January 3, 1975."

If the Subcommittee meant by this language to reiterate the injury test which Congress enunciated in 1974, the language is not adequate. The problem arises from the use of the word "applied," which would have the effect of writing into the law the higher injury standard which the ITC has been "applying" in the last few years.

If Congress wishes the injury standard to be "any injury which is greater than frivolous, insubstatntial, immaterial or de minimis" then it should say exactly that. If it wants a higher standard, then it should define what that new standard will be. To do otherwise would be to relinquish the lawmaking authority on this crucial issue to the trade negotiators or to the ITC.

C. Remedies: Collections of Duties, Provisional Payments, Amount of Duty, etc.

American Importers Association: Richard A. Maxwell, First Vice President:

Payment of Estimated Dumping Duties Upon Entry. The Senate Finance Committee tentatively has decided that estimated dumping duties be paid upon entry for products under a dumping finding. This proposal adds a punitive feature to the antidumping law—not only would an exporter have to raise his price in order to avoid present dumping duties on the entry, the importer would have to pay an equivalent amount as "estimated dumping duties" to atone for the past practices of the foreign exporters. This double penalty could have the very real consequence of forcing a number of small importers out of business. Moreover, the payment of estimated dumping duties does nothing to solve the real problem with the assessment process, which lies in the failure of the Customs Service to administer the Master Lists. We recommend a continuation of the current practice of requiring bond until such time as goods have been determined actually to be dumped. Congress should legislate time limits on the assessment process. To the extent that delay in the preparation of Master Lists are incurred because of exporters, Customs can remedy the problem by using the best information available if that information is not forthcoming in a reasonable amount of time. To require a payment of estimated dumping duties would penalize importers in cases where dumping actually has been eliminated, thereby erecting a totally unjustified non-tariff barrier.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

[Recommend] A complete reformation of the assessment and collection process, which has proved to be the weakest link in the statutory scheme. These changes should include:

Prompt collection of estimated special dumping duties at the same time that regular duties are paid (rather than the present practice of accepting an inexpensive bond, which merely provides an incentive for delaying the process).

Precise limitations on the permissible types of adjustments and allowances which may be made in the margin of dumping at the assessment stage.

A right of access on the part of affected domestic interests, including unions, to the data and analysis upon which the amount of the actual assessed duty is based, together with a right to participate at the administrative protests.

Provisions granting domestic interests the same rights to appeal assessments as are accorded to importers. (Under § 516 of the Tariff Act as presently written, although importers may appeal assessments on an entry-by-entry basis, U.S. manufacturers may only appeal test cases and may obtain only prospective relief—while unions have no appeal rights at all.)

Time limits on the final collection of dumping duties.

C. Remedies: Collections of Duties, Provisional Payments, Amount of Duty, Etc.

Automobile Importers of America, Inc.: Ralph T. Millet, Chairman of the Board; and John B. Rehn, Special Counsel:

Both the IAC (I8(a)) and the Subsidies Code (I41) provide that "it is desirable . . . that the [dumping or countervailing] duty be less than the margin [or total amount of the subsidy] if such lesser duty would be adequate to remove the injury to the domestic industry."

We believe that this principle is sound, since the imposition of a dumping or countervailing duty is justified not because an unfair trade practice exists but because that practice is a cause of injury to the domestic industry. Therefore, for example, if the margin of dumping is one dollar, but a dumping duty of 50 cents will prevent further injury, it obviously makes no sense to impose a dumping duty of one dollar. We therefore urge that the Act be amended to incorporate this principle.

Imposition of Dumping Duties. The IAC (I8(a)) makes it clear that a dumping duty may be imposed only "where all requirements for the imposition have been fulfilled". The Subsidies Code (I41) contains identical language. The Act is consistent with this principle.

However, the Treasury Department is of the view that the Act confers upon it the authority, following a finding of dumping, to impose provisional dumping duties upon entries that come within that finding but prior to a determination that those entries have, in fact, been dumped. This violates basic principles of fairness and due process

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The amount of the antidumping duty imposed should fully offset the dumping margin. Furthermore, this remedy should not be removed by any settlement devices which assess a duty in an amount that is less than the amount of the dumping margin.

The United States should require provisional duties in the form of cash deposits equal to the margin of dumping.

Provision should be made to expedite the assessment and collection of duties.

and may well be unconstitutional. An importer should have to pay dumping duties only when his own goods are, in fact, found to have been dumped. The Act should therefore be amended to authorize the Treasury Department only to require the posting of bonds following a finding of dumping and prior to an entery-by-entry determination of a dumping margin.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.:

As attorneys who have frequently represented exporter's and importer's involved in dumping cases, we believe the conception of tightening up the provisions for provisional remedies is based upon a fundamental misunderstanding. Suspension of liquidation and the necessity to file bond on products entered into the United States while there is still substantial uncertainty with respect to the final duties to be due in a very heavy and serious sanction at present. We have no great familiarity with the experience in the television cases, but we believe that those cases have their own peculiar history and are not typical of what happens when there is a suspension of appraisement or a final dumping determination. The fact is that in the large majority of cases, the mere filing of a dumping complaint is a deterrent to trade because many parties will not wish to take the risks. That deterrent effect increases as a dumping case proceeds through the tentative determination to the final dumping finding, if there is one. A requirement that bonds be posted earlier than now provided or

that estimated duties be deposited after a finding, is punitive in its nature and unjustified.

We are not aware of any situations under current practice in which the government's ability to collect the duties has been inadequate. We think it is not sufficiently well understood that differential pricing is normal business practice and is highly appropriate in many circumstances. Only when it injures are counter measures justified and they should not be regarded as penalties. It is also insufficiently understood that the dumping calculations are usually complex, and that whether there has been dumping at all is frequently not known to the parties until the investigation has proceeded through its preliminary stages. As soon as he can discern what the direction of the Treasury's finding is likely to be, a prudent exporter modifies his prices to be sure that there will be no further dumping. Thus, in the normal situation, earlier bonding requirements or a requirement of cash deposits would be punitive.

Finally, the idea of basing estimated duties on the margins found during the initial period of investigation is particularly unfair and unsound. Any duties that are collected must in fairness be based upon the latest information which is supplied by the parties. Thus, in most cases there never will be a dumping duty collected. This should not in the least be regarded as poor enforcement of the law, but rather as success in accomplishing the purposes of the law.

Consumers for World Trade:

The "Pay first, we'll determine the guilt later" procedure for assessing penalties in cases of alleged dumping appears to be unwise and unfair. To levy fines even before any investigation has been conducted or findings made that goods have, in fact, been "dumped" places unfair burdens on traders. The current system of posting bond appears to have worked adequately.

D. Waiver of Dumping Duties/Discontinuances/Price Assurances

Automobile Importers of America, Inc.: Ralph T. Millet, Chairman of the Board; and John B. Rehm, Special Counsel:

Presidential Waiver of Dumping Duties. Both the IAC (18(a)) and the Subsidies Code (141) provide that "it is desirable that the imposition [of dumping or countervailing duties] be permissive. . . ." Contrary to this provision the Act requires that dumping duties be imposed following a finding of dumping, with no exceptions allowed.

We urge that the Act be amended to give the President limited discretion to waive the imposition of dumping duties if he determines, and so reports to the Congress, that such imposition would have specific adverse domestic economic consequences. It is simply unwise, in our judgment, to require that each and every finding of dumping be implemented regardless of the severity of its impact upon the domestic economy. For example, the President should be able to waive dumping duties if their imposition would have serious anti-competitive effects that clearly outweigh the benefits of such duties.

The IAC (17(a)) provides that antidumping proceedings may be terminated without imposition of antidumping duties upon receipt of a voluntary undertaking by the exporters to revise their prices to eliminate the margin of dumping or to cease to export to the area in question. The Subsidies Code (145) provides for a similar

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

[Recommend.] Elimination of the authority to discontinue an investigation without the consent of the petitioner, and appropriate restrictions on revocations of dumping findings.

Far from reducing the government's discretion to discontinue and terminate cases, the proposals would greatly expand that authority. Cases would be subject to discontinuance whenever assurances were received which were deemed sufficient by the government to overcome the injury to the domestic industry. Thus the actual margin of dumping would not be assessed; even taking so-called "assurances" at face value, only a portion of the margin (the "injurious" portion) would be eliminated. Since the entire margin of dumping represents an unfair practice, there is no justification for not requiring the elimination of the full margin.

Similarly, the proposals set overly lenient criteria for revocation of a dumping finding. The proposals appear to call for a revocation if a foreign supplier merely stays out of the U.S. market for 2 years, without requiring the supplier to demonstrate his willingness and ability to sell at fair value in the U.S. And the proposals call for injury findings to be reconsidered upon receipt of evidence of any "change in the condition" of the affected U.S. industry.

procedure. The Act is silent on this question, and the practice of the Treasury Department under the existing antidumping regulations is to accept price assurances only if the margin of dumping is less than one percent.

We urge that the Act be amended, consistent with the two Codes. The purpose of the Act is to eliminate the dumping margin. If it can be eliminated by voluntary action on the part of the exporter, instead of by the imposition of dumping duties, then the purpose of the Act is equally served.

William H. Barringer, Arter, Hadden & Hemmendinger, Washington, D.C.

Discontinuance of Investigations. We believe that there are situations in which the interest of the parties are best served by settlement through a discontinuance procedure. We hope this committee will encourage the Administering Agency to terminate as many cases as possible before a dumping finding, particularly in two situations. The first is where the exporter was not a deliberate dumper, so far as can be judged, has shown a zeal to eliminate margins, and is willing to give the desired assurances, although the margins as found were more than 2% or so allowed in current Treasury practice. I assure you as a practitioner who has helped clients go through the complex calculations, that because of the peculiarities of the Treasury fair value calculations margins well over 2% are quite possible without intentional dumping and in some cases without any dumping at all in a business sense. Discontinuance's in this

Westinghouse Power Systems Company: Gordon C. Hurlbert, President:

The U.S. Antidumping Act should not be weakened by allowing the Treasury Department to waive import penalties when a foreign company is found guilty of dumping in this country, merely by letting that company promise not to sell in the U.S. at prices not so low as to injure U.S. industry. Nor should that Act be weakened otherwise.

Our Treasury Department wants legal authority to terminate dumping investigations by having the foreign exporter agree not to sell at prices so low as to injure American manufacturers. They also want to have Congress provide a new, untested definition of "injury" to U.S. industry. The proposed new concept of "material injury" could mean whatever foreign countries who are GATT members can successfully urge upon our Treasury Department and the International Trade Commission.

Why should Congress let foreign governments impose legal criteria for protecting American industry and labor from the foreigners' own unfair trading practices which are detrimental to U.S. industry and labor?

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc.), Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

Third, price assurances, which are appropriate under

situation should be permitted regardless of the petitioner's consent. In order to protect the public interest against price undertakings given in the absence of injury, the ITC should review the effect of the discontinuance on the injury question.

Second, it should be possible to settle any case before a dump finding with the consent of the petitioner upon a type of consent order. Such an order would have, of course, to be scrutinized carefully to be sure it is not simply a vehicle for a collusive agreement in restraint of trade. There should be no direct contact between petitioner and exporter or the representatives. A settlement should orginate in a proposal by the exporter to the Administering Agency, which should examine to determine if there are fair grounds, and then sound out the petitioner. The Administering Authority should not be just a post office, but should actively explore the possibilities for an agreed solution consistent with the public interest. The ITC should be asked to determine injury preliminarily and, the proposed consent undertaking should be published and submitted to an interdepartmental committee for approval.

The philosophy behind these proposals is that there is a public interest in the expeditious settlement of a dumping controversy like any other, whether you regard it as a dispute in the public or the private arena. There is an antitrust problem, but the greatest threat to compe ition comes from the antidumping act itself and it would be quite out the antidumping statute because it is a price-discrimination statute. They can be abused, however.

To guard against abuse, we urge that:

1. An assurance should be accepted only after a preliminary determination of dumping, and it should eliminate the dumping margin by increasing the price of the imported product (not by lowering the home market price). It should not be less than the foreign market value during the term of the assurance.

2. Imports following a price assurance should be monitored in the same way that imports subject to a dumping finding are monitored (by means of master lists, entry-by-entry examination, and semi-annual reporting by exporters).

3. If there is a default in the performance of a price assurance:

(*a*) The default should be treated as an infraction of the Customs laws to which civil penalties apply under 19 U.S.C. 1592. Since the importer would be liable for the penalty, just as he would be liable for dumping duties, the price assurance should include a commitment by the exporters to notify their importers of this liability.

(*b*) A dumping finding should immediately be published and duties collected.

4. The price assurance should last not less than three years. At the end of that time, the case should be reviewed to determine whether the assurance should be continued, modified or ended.

ground.
of proportion to refuse to countenance settlements on this

We note that the countervailing duty law amendments contemplated by this subcommittee do recognize the possibility of consent settlements, and we think this idea should also be applied in antidumping cases.

Richard O. Cunningham, Steptoe & Johnson, Washington, D.C.

The most disastrous weakening of the Antidumping Act now being proposed is the effort by the Treasury Department to gain authority to negotiate settlements on a basis which would deprive U.S. industries of full relief. This proposal is masquerading under the name of "price assurances," but in reality it is something very different and highly pernicious.

At the outset, the Committee should recognize that this new proposal bears little resemblance to the price assurance procedure which Treasury now uses in dumping cases. The existing procedure, in keeping with the purpose of the Act, aims at eliminating dumping. It is employed at the end of Treasury's investigation, where dumping has been found but the LTFV margins are minimal. The "assurance" given by the foreign exporter is that no future sales will be made at prices below fair value. Treasury then monitors imports from that exporter for at least two years, to ensure adherence to the price assurance.

The new proposal, in contrast, has nothing whatsoever to do with the elimination of dumping. No longer will the foreign exporter promise to refrain from dumping. Rather, it will agree to "adjust its prices so as to eliminate any injurious effects." Indeed, this settlement procedure will be utilized early in the Treasury investigation, at a point where there has been no determination of the size of the dumping margins. If you don't know what the dumping margin is, you can't very well eliminate it.

D. Waiver of Dumping Duties/Discontinuances/Price Assurances

What, then, is the purpose of this proposal? You are going to be told that Treasury needs a way of settling cases early, without full investigation, in order to conserve its resources and "enforce" the Act more effectively. I suggest to you that that is not the motive at all, and that if Congress were to provide Treasury with all the funding and manpower in the world, this Administration would still seek authority for this new price assurance procedure.

The people who are proposing this radical departure don't really believe that dumping is something unfair, something that should be eliminated. They are leery of the Antidumping Act because it is—in their way of thinking—something which restricts their flexibility to manage international trade. They fear that cases will come along from time to time in which a strict enforcement of the Act would result in very large dumping duties being assessed against imports which are important in trade relations with one or more other countries—something like television sets from Japan or automobiles from any of a number of countries. In such a case, this Administration wants to have a means of not enforcing the law fully, of negotiating a deal which will mollify—perhaps not satisfy or even fully protect, but mollify—the U.S. industry while at the same time avoiding undue offense to the government of the exporting country.

In evaluating this new concept, there are a few things this Committee should understand:

First, these assurances are specifically designed to provide less relief than would be obtained if the case were prosecuted to conclusion. The new Code specifically provides that: "Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping."

Second, the new procedure would be wholly unworkable as a means of providing meaningful protection to U.S. industries. One reason is that there will be no realistic determination of what price increase is necessary to eliminate injury to the U.S. industry. Rather, a deal will be struck between Treasury and the foreign producer. In this connection, I urge the Committee to question Treasury and STR closely as to precisely how they plan to determine what price increase is necessary to eliminate injury. If they can provide you with some formula, then you will have something tangible on which you can base your evaluation of this bizarre scheme. But if they tell you instead that there is no single method or formula, that each case will have to be evaluated on its own merits, then I submit that you should conclude that this is in fact nothing more than a means for the government to administer prices in international trade.

But even if one were to assume that a price could be and would be set which would genuinely eliminate injury, consider what happens as time passes in this inflationary world. As U.S. producers' costs and prices rise, imports will again become injurious unless their prices rise along with the prices of the U.S. firms. Will Treasury require

the foreign companies to keep raising their prices as U.S. prices rise? I think you know the answer to that question.

I urge the Committe to look long and hard at this new price assurance idea. Find out exactly how it's going to be used before you adopt it. But if you do adopt this idea, I suggest that we change the name of the law, because it won't be an Antidumping Act any more.

E. Definition of Domestic Industry

Automobile Importers of America, Inc.: Ralph T. Millet, Chairman of the Board; and John B. Rehm, Special Counsel:

The IAC (I4(a)) defines the domestic industry to refer "to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". The Subsidies Code (I65) contains a substantially identical definition. Moreover, both the IAC (I2(b)) and the Subsidies Code (I61 footnote 2) define a "like product" to mean a product which is identical to, or has characteristics closely resembling those of, the product under consideration. The Act, on the other hand, provides no definition whatsoever of the domestic industry.

We believe that the domestic industry should consist of those companies that make products that are like the imported product, the companies that make products that are directly competitive with the imported product, and the companies that make both the like and directly competitive products. We further believe that this definition is consistent with the definition of "like product" in the Codes. We therefore urge that the Act be amended tc incorporate the concept of "like and directly competitive" for purposes of defining the domestic industry.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Revision of the definition of "industry," replacing the phrase "like or directly competitive" with terms which will insure that the upstream and downstream effects of dumped products are considered and remedied.

F. Degree of Causality

Automobile Importers of America, Inc.: Ralph T. Millet, Chairman of the Board; and John B. Rehm, Special Counsel:

The IAC (I3(a)) provides that dumped imports, that is, those sold at less than fair value, should be "the principal cause" of material injury. The Subsidies Code does not specify the degree of causality and simply requires that the subsidized imports "are causing" material injury (I64). The Act is in substance identical to the Subsidies Code.

AIA believes that the test of the IAC is perhaps too demanding, but that the test of the Subsidies Code and the Act is clearly too lax. If dumped imports are only a slight cause of material injury, and other factors are more important causes of such injury, governmental intervention is not justified.

We therefore urge that both Codes and the Act adopt the test of "a substantial cause" now embodied in the escape clause. As you will recall, section 201(b)(4) of the Trade Act of 1974 defines "a substantial cause" as "a cause which is important and not less than any other cause". This, we believe, is a modest and fair standard.

At present, the ITC generally interprets the Act to require that the dumped imports be only an identifiable cause of injury, even though they are clearly a lesser cause than one or more other factors. From January of 1975 through March of 1979, the ITC made 18 affirmative in-

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland):

The statute should retain the requirement that the dumped imports be a cause of injury to a domestic industry.

jury determinations under the Act. In at least 13, in our judgment, the ITC made such affirmative determinations even though the industry did not suffer material injury, or, if it did, the dumped imports were a less important cause than one or more other factors. Our conclusion is based upon a review of uncontroverted facts set forth in the majority and dissenting opinions.

G. Treasury's Rules for Making Price Comparisons

American Importers Association: Richard A. Maxwell, First Vice President:

Deletion of Cost of Production and Minimum Percentage Markups. While not addressed by Congress, we recommend, based upon inconsistency with the Antidumping Code and the recent GAO study, that Section 205(b) referring to cost of production and Section 206(a) which mandates arbitrary addition of 10 percent for general expenses and 8 percent for profit, be eliminated from the Antidumping Act.

Richard O. Cunningham, Steptoe & Johnson, Washington, D.C.:

At present, the rules used by the Treasury Department for the making of Antidumping Act price comparisons are so imprecise and uncertain that it is awfully difficult (in all but the most extreme cases) for a U.S. industry aggrieved by low-priced imports to know whether or not it can obtain relief under the Act. By the same token, it is often very difficult for a foreign exporter to know whether or not its sales to the United States are at LTFV prices—despite the fact that the exporter has within its possession complete data concerning its home market and export prices and all expenses incurred in connection with its sales in the two markets.

The difficulty, obviously, does not lie in the prices themselves. Rather, the problem is that no one can know, until a given investigation has run its full course, precisely what "adjustments" Treasury will make to the prices which the foreign firm charges to its U.S. customers and to its customers in the home market. The imprecision in Treasury's rules centers on three principal areas: selling expenses, adjustments for differences between the U.S. merchandise and the home market merchandise, and the use of allocations in making adjustments.

Selling Expenses. The selling expense issue is perhaps the thorniest of all problems in the administration of the Antidumping Act. In almost every investigation—certainly in all investigations involving consumer products—the foreign exporter argues that any apparent difference between its U.S. prices and its home market prices is attributable to the fact that it incurs much greater selling expenses in its home market sales. These claimed expenses in the home market include the maintenance of a much more elaborate distribution system, higher warranty costs, larger expenses for servicing the merchandise, etc. In principle, it seems logical that an adjustment should be made if home market selling expenses are in fact greater than the selling expenses incurred in the U.S. market. However, the issue is nowhere near that simple. Consider, for example, the following questions:

Should an adjustment be allowed for a more elaborate home market distribution system, if a major reason for having such an elaborate distribution system is not to increase sales, but rather to provide a retirement for the firm's elderly employees, as is often the case in Japan?

If the exporter engages heavily in home market advertising which is not designed to promote specific products, but rather to promote the company's "image" (for example, "Imperial Chemical Industries leads the world in chemical technology"), should the cost of such "image advertising" be deducted from home market prices?

If the foreign company provides day care facilities for children of women who work in its sales department, is that a deductible "selling expense"?

The current Antidumping Regulations, as well as the questionnaire which the Customs Service sends to foreign exporters in dumping cases, require that a selling expense must be shown to be "directly related" to sales of the merchandise under investigation, in order for that expense to be deductible from the price of the sale. In the last several years, however, the Treasury Department has been increasingly willing to classify as "directly related"—and thus deductible—more and more types of expense. A vivid example of how far Treasury has gone in this direction occurred last year in the investigation of Motorcycles from Japan, where the cost of "mobile medical units" was allowed to be deducted as a "directly related" home market selling expense. In the same case, "image advertising" was also placed in the deductible "directly related" category.

Treasury's adoption of this more expansive allowance of selling expense deductions represents a major change in the meaning of the Antidumping Act. Cases which would have been won by the complainant three years ago are now lost or result in a finding of minimal dumping margins. Yet that change has not been accomplished through an amendment of the Act by the Congress. Rather, it has been accomplished administratively.

It may well be that the Congress concurs in the new meaning which Treasury has given to the Act. After all, foreign respondents have for years argued that all costs—not merely those which are "directly related" to sales of the merchandise under investigation—should be taken into consideration in making the price comparisons. But it is also quite possible that Congress does not agree with Treasury's present approach. Complaining U.S. industries take the position that expenses which are not a part of the actual selling function and/or are not related specifically to the product under investigation should be regarded as general overhead items, and spread evenly over all of a company's sales—home market and export—thus resulting in no pricing adjustment in LTFV comparisons. The resolution of this issue involves questions which are both complex from an accounting standpoint and fundamental to the philosophy of the Antidumping Act.

But if the proper resolution of the selling expense issue is not clear, it is clear that the issue is of such importance that it should be decided by the Congress and not by the administrative agency. It is no exaggeration whatsoever to say that most cases today are won or lost on the selling expense issue. The price adjustments in this category can easily result in a swing of 20 percent or even 30 percent in the comparisons, which is generally enough to change a determination from affirmative to negative, or vice versa. If there is to be any meaningful revision of the Antidumping Act, I strongly urge that the Congress closely examine the selling expense issue, hold hearings on it, study its impact on decisions over the past several years, and make the policy judgments necessary to lay out clear and precise rules as to what expenses are deductible and what expenses are not deductible.

Adjustments for Differences in the Characteristics of the Merchandise. In almost all dumping cases involving manufactured products, the foreign exporter will argue that the merchandise which it sells in

its home market differs in characteristics from the merchandise sold in the United States, and that an adjustment should be made for the cost differences attributable to these differences in characteristics. This proposition is unexceptionable in principle, but the application of that principle in dumping cases has proven horrendously difficult.

What happens in practice is that the foreign manufacturer presents to Customs two computer printouts purporting to show the costs of producing the export version of the merchandise and the version sold in the home market. The Customs representative can do little more than compare the cost at the bottom of one printout with the cost at the bottom of the other, and make the pricing adjustment on this basis. In only a few cases—the duty assessment phase of the color television case being a prominent example—has Customs gone into real detail in analyzing the relative costs of the home market merchandise as compared to the costs of the U.S. merchandise.

Since there is usually no really meaningful investigation of this cost adjustment issue, there is no way of knowing with certainty whether the adjustments have or have not been accurately made. However, many U.S. complainants feel that errors in making these adjustments have resulted in—or at least contributed to—the loss of cases which should have been won.

This problem is a particularly difficult one to solve, because the analysis of costs is always more difficult than the analysis of prices. However, the cost adjustment process could be greatly improved by three changes, two relating to the criteria for the making of adjustments and the third relating to Customs' analytical procedure:

First, adjustments for cost differences should be predicated only on cost differences which are directly related to differences in the characteristics of the merchandise. Where a difference in cost of production arises from the fact that one article is produced in a different plant than the other, or from the fact that more overtime is used in the production of one of the articles, or for some other cost variant unrelated to a difference in the specifications of the two articles, then there is no logical basis for making any cost adjustment. It should therefore be incumbent upon the exporter claiming a cost adjustment to demonstrate that that adjustment is directly related to a difference in the characteristics of the U.S. article and the home market article.

Second, adjustments should be made only for differences in direct costs of materials and labor, and not for overhead expenses. This is a derivative of the first proposal. Overhead costs are inherently general in nature, and not related to differences in specifications of the merchandise. Moreover, analysis of overhead expenses is exceedingly difficult and is dependent upon the uncertainties of allocation principles.

Use of Allocations in Computing Adjustments. Many dumping cases now involve foreign exporters which are multi-product companies. In such cases, analysis of discounts, selling expenses, and the like in home market sales is often complicated by the foreign producer's contention that it does not break its financial statements down into the categories required for this investigation. Assume, for example, that the foreign producer sells products A, B, C, D, E and F in its home market, but that the dumping case involves only product

C. The foreign producer states that it keeps no separate expense records for product C, but rather groups the product C expenses in the same category as products A, B, D and E. In such circumstances, the foreign producer generally proposes that it be permitted to allocate to product C a percentage of the total expenses for products A, B, C, D and E equal to the percentage of sales of these five products represented by sales of product C. This seems reasonable at first glance, but consider the following examples:

Home market sales of product C represent 20 percent of the foreign producer's total home market sales. The foreign producer proposes to allocate 20 percent of its home market television advertising expense to sales of product C. However, the U.S. complainant states that its investigation has revealed that the foreign producer does substantially no home market television advertising of product C. Should the allocation be allowed? What, if any, further documentation should be required?

The foreign producer gives an annual bonus to each of its home market dealers who attain a certain volme of sales. However, the producer's home market sales of the product covered by the dumping investigation represent only 5 percent of its total home market sales. Accordingly, the dealers invariably obtain their bonus primarily by making sales of products other than the product covered by the investigation, and some dealers will be receiving bonuses despite the fact that they have made no sales whatsoever of the product under investigation. Should the foreign producer be allowed to allocate 5 percent of its bonuses to sales of the product under investigation? What, if any, further documentation should be required?

In recent years, Treasury has been increasingly willing to accept allocations as the basis for computing price adjustments. American complainants have vigorously protested this trend, arguing that the foreign producer should be required to substantiate fully any claim for an adjustment which would eliminate (or tend to eliminate) apparent dumping margins. The foreign producer, on the other hand, argues that it cannot be expected to maintain its records in precisely the categories covered by the dumping investigation, and hence an allocation of some sort is essential.

There are at least three possible resolutions of this problem:

First, the U.S. complainants' position could be adopted, requiring the foreign respondent to demonstrate the actual amount of any expense, discount, etc. actually paid or incurred with respect to sales of the merchandise under investigation.

Second, Treasury's current policy could be retained, allowing the foreign producer to use any reasonable method of allocation of expenses, discounts, bonuses, etc.

Third, an approach could be adopted similar to that used in exporter's sales price cases. If the foreign producer is able to demonstrate the actual amount of expense incurred, discount paid, etc. on sales of the item under investigation, then that amount would be fully deductible. If an allocation were required, however, the per-unit amount deductible from home market prices could not exceed the per-unit amount deducted for the same category of expenses (or discount, bonus, etc.) in the U.S. market.

Whatever resolution is finally reached, the issue is one of major importance, and thus should be resolved by the Congress, rather than by the administrative agency.

American Importers Association: Richard A. Maxwell, First Vice President:

Use of Averaging In the Assessment Process. The Senate Finance Committee tentatively has decided that assessment of dumping duties be carried out with the use of sampling techniques and averaging to compare U.S. and foreign market value, and that "insignificant adjustments" could be ignored at the agency's discretion. We recommend that, as difficult as the duty assessment process is, every importer has a right to have its duties assessed on the individual merits of that entry. Any solution seeking to accelerate the process by disregarding the rights of importers should be rejected as fundamentally inconsistent with our system of law.

H. Confidentiality Regulations

Charles O. Verrill, Jr., Patton, Boggs & Blow, Washington, D.C.:

A critical deficiency in the administration of the Antidumping Act has been the abuse of the confidential submission regulations. Under present practice, Treasury uniformly accords confidential treatment to information submitted as such. While a summary of the confidential information is technically required, parties frequently resort to the contention that summarization is impractical or provide summaries that are meaningless. In any case, confidential treatment of information relevant to an investigation deprives Treasury of the benefits of advocacy and removes an important check on the submission—under the veil of secrecy—of false or misleading data. On the other hand, failure to accord confidential treatment could impede investigations because of a reluctance to publicly reveal sensitive information.

While AMF recognizes—and supports—the principle of confidentiality of private information, there is also a need for access to confidential information by independent counsel and experts for opposing parties pursuant to protective orders that prohibit further disclosure of such information. Such access would inhibit submission of false or misleading information without compromising its confidentiality. In this connection, we propose the following amendment to the Antidumping Act:

§ *Confidentiality:* (1) During any investigation, information provided on a confidential basis shall be regarded as confidential within the meaning of 5 U.S.C. § 442(b)(4) if so designated by the administering authority. In the event information is designated as confidential by the administering authority, and therefore any party to the proceeding is denied access to the confidential information, then such a party may file a petition for a protective order with the United States District Court for the District of Columbia or the district in which the petitioner is located or has its principal offices. Before issuing such an order, the district court shall find that—

(A) the administering authority has denied access to the confidential information based upon a claim of confidentiality or upon its own motion;

(B) the petitioner is a legitimate party to the proceeding before the administering authority in which the issue of confidentiality was raised; and

(C) proper notification of the petition has been served on all parties to the proceeding before the administering authority.

(2) Where the findings required by subsection (1) of this section have been made, the district court shall issue a protective order requiring disclosure of the confidential information to designates of the petitioner. Such order shall—

(A) forbid disclosure of the confidential information by the designates except as authorized by the party submitting the information;

(B) require endorsement by the designate of a conforming confidentiality agreement prior to receiving the confidential information; and

(C) provide for return of the confidential information and all copies thereof to the administering authority immediately after the investigation is finally determined.

(3) For purposes of this section—

(A) "designate" means independently retained attorneys, accountants and experts but shall not include any stockholder or employee of a party to the investigation;

(B) "District court" means a United States district court established under Chapter 5, 28 U.S.C.

This amendment would give experts, lawyers, and accountants for the petitioners an opportunity to evaluate confidential material and to submit comments thereon to the administering authority pursuant to court order and thus not jeopardize the basic confidentiality of the information. Since the court has both civil and contempt powers in the case of a violation of a confidentiality agreement, there is little likelihood of an abuse of the system. While this procedure imposes ministerial responsibilities on the courts, it is analagous to the immunity procedures of 18 U.S.C. §§ 6001–6005 which were upheld in Application of U.S. Senate Select Committee on Presidential Campaign Activities, Misc. No. 70–73, 361 F.Supp. 1270 (D.D.C. 1973).

It should also be noted that the House Ways and Means Committee and the Senate Finance Committee have approved a similar procedure in connection with their deliberations on implementing amendments to the countervailing duty statute (19 U.S.C. § 1303):

"The Subcommittee agreed that submissions may be given on a confidential basis, but nonconfidential, summaries, available on request to any party, would be required. The counsel for interested parties could seek access to confidential information under an administrative court or protective order. Parties must be kept informed of the progress of the investigation. Summary records of ex parte meetings with the administering agencies must be available to interested parties."

A similar amendment to the Antidumping Act would enhance the credibility of dumping determinations.

I. Ex Parte Rules

Charles O. Verrill, Jr., Patton, Boggs & Blow, Washington, D.C.:

In the Polish Golf Car case, AMF has, through Freedom of Information Act requests, uncovered a variety of correspondence and

memoranda of meetings between Treasury Department officials and representatives of the Polish government and the manufacturer of Melex golf cars. These documents suggest that part of the reason for delay in liquidations in that case has been the extraordinary amount of dialogue about the proper resolution of the duty amount in which the domestic industry had no opportunity to participate. While we can appreciate the sensitivity of foreign governments, particularly where state owned enterprises are concerned, to the imposition of duties following a dumping finding, the actual determination of dumping duties should not be negotiated in private without the participation of the domestic industry.

Accordingly, we urge that Treasury be required to adopt rules, common to virtually all administrative proceedings, that would provide that no communication from a person interested in the dumping proceeding or a dumping duty would be accepted by Treasury unless a copy was simultaneously served on counsel for the domestic petitioners. In addition, we urge that Treasury be required to advise domestic petitioners in advance of any meeting relative to the duty liquidation (other than internal meetings) and allow them an opportunity to participate or, at a minimum, be provided with a summary of the matters discussed by the meeting participants.

J. Participation by Counsel

Charles O. Verrill, Jr., Patton, Boggs & Blow, Washington, D.C.:

During the six or nine month fair value investigation by Treasury, counsel for the domestic industry and foreign producers have an opportunity to participate in the factual and legal determinations, although the procedures could be improved substantially to ensure a greater degree of administrative due process. However, the determination of foreign market value during the investigative phase of an antidumping proceeding does not automatically become the foreign market value for purpose of liquidating duties against imports after withholding of appraisement is ordered. Treasury rarely, if ever, imposes dumping duties on the imports that were at less than fair value during the investigation; it is only imports after that phase is completed that are subject to duty. As a result, the determination of foreign market value for liquidation purposes can be made on wholly different assumptions and factual inputs than those that led to the less than fair value decision and the actual dumping duty which is ultimately assessed can be significantly different than anticipated by the domestic industry.

In order to cure this absence of administrative due process, we recommend legislation that would require the Treasury to notify counsel for the domestic petitioners within a short period, say three months, after a formal finding of dumping of the proposed basis for determining foreign market value, including all adjustments for purposes of computing dumping duties. Treasury should be required to provide domestic counsel with copies of all correspondence and information submitted by the foreign producer in connection with its deliberations and there should be an effective opportunity to rebut or otherwise challenge any of the calculations made. Thereafter, Treasury should be required to follow the same procedures in the case of a change in foreign market value.

We believe that such a procedure would enable the domestic industry to effectively participate in the liquidation of duties and to insure that the relief provided by the Act is, in fact, granted. Finally, the establishment of time limits would have the beneficial effect of providing the domestic industry with a vehicle for, if necessary, seeking a writ of mandamus from the federal courts to provoke Treasury action.

K. Customs Service Investigative Procedures and the Necessity for Commitment of Greater Resources

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

A requirement that all data relied upon must be verified, and that the best available data shall be utilized as the basis of decision if a party fails to provide data in a timely, reliable, and verifiable fashion.

Richard O. Cunningham, Steptoe & Johnson, Washington, D.C.:

If the United States is serious about enforcing this Act, it should totally revise the verification process, along the lines which I suggested to the Committee. In each case, a team should be dispatched to the foreign country for purposes of checking the information submitted foreign producer. That team should consist of the Customs case handler, at least one accountant, a technical advisor who is familiar with the product in question, and—in those cases where the response is computerized—a data processing expert. Instead of a one day visit to the facilities of the foreign company, this team should be prepared to spend as much as a week, in order to conduct a thorough examination for purposes of verifying the data.

Obviously, such an investigative procedure will require a major increase in both the manpower and the funding of the administering agency. Adequate procedures for assessing dumping duties after a finding has been entered—another area in which all observers agree that present procedures are woefully lacking—will also require a much greater commitment of resources. In all, I submit that we are not talking about a 50 percent increase in funding, or even a doubling of funds. If we want effective enforcement of this law, we need an administering agency with something like four to five times the manpower and funding now allocated to the offices in Treasury and Customs which deal with this Act. I think that this law is worth that investment.

Charles O. Verrill, Jr., Patton, Boggs & Blow, Washington, D.C.:

While verification by Customs of information submitted by parties to an investigation is routinely undertaken, the procedures utilized are, by virtually all accounts, utterly inadequate. The following description of the "verification" actually undertaken in proceedings was furnished to the Trade Subcommittee of the House Ways and Means Committee during hearings last September:

"In walked the verification officer and all he looked at was a two page cost summary which we had prepared.

"He didn't even want to see all the supporting materials. He explained he was not an accountant and he was not qualified to do an audit.

"My client played it straight in that case. We presented a valid constructed value computation with full supporting data; but I must say that if we had presented a totally imaginary thing, the Customs Service never would have known the difference.

"Another example. Last year I encountered a fellow who had previously been an officer of a foreign company during a dumping investigation.

"I was not involved in the case.

"The story he told would curl the hair of anyone who wants to see the antidumping law enforced effectively.

"What the company did was instruct their computer programer to eliminate most of the higher priced home market sales from the computer printout that they gave to Treasury.

"When the verification officer arrived, he did a spotcheck and he concluded that the entries on the computer printouts were accurate. What he didn't do and couldn't do was check whether the printout included all of the home market sales, including the high-priced ones as well as the low-priced ones." [Testimony of Richard O. Cunningham, September 21, 1976, Serial 95–114, at 139.]

Experience has shown that these are not isolated or aberrant examples; instead, these episodes reflect the norm and unfairly prejudice the domestic petitioner.

The solution, unfortunately, is not as clear as the problem. Higher budgets, more qualified personnel and better training would clearly help. Another way to improve the verification process would be to require full disclosure of the methods utilized by the verifying officer(s), including information inspected, sampling techniques, hours devoted to the inspection, and so forth. This disclosure would enable the other parties to challenge the verification if it appeared inadequate and would encourage the verifying officer(s) to more thoroughly approach the task.

L. Dumping From Non-Market Economy Nations (Discussion of Polish Golf Cart Case Issues)

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

Urge "Adoption of realistic and objective statutory rules for computing the margin of dumping where state-controlled economies are involved."

* * * * * * *

Section 405 of the Trade Act of 1974 and Section 406 should be amended to assure that emergency action and market disruption action be related to the additional effect of imports on impacted domestic industry—both upstream and downstream.

The International Trade Commission has neither monitored nor reported adequately on non-market economies' trade. This should be changed so that special monitoring of imports from non-market economies can be used to show the impact on U.S. jobs and industries.

Section 205 of the antidumping act as amended in Section 321 of the Trade Act of 1974 should be enforced. (This has been avoided by Treasury regulations in dumping cases to help imports from non-market countries.) A new provision to emphasize special direction to the Treasury Department or the appropriate statutory agency to prevent dumping from non-market economies should be enacted. The current Treasury regulations should be overturned.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc.), Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott):

The obvious problems arising from different accounting concepts in determining the amount of a dumping margin on imports from

socialist economies have been exacerbated recently by a new Treasury Department regulation which compares economies rather than industries. Unfortunately, Article 15 of the recently-initialled Subsidies Code does nothing to alleviate the situation.

Prior to August 1978, Treasury established a foreign market value (for purposes of finding a dumping margin) by examining an industry in a free-market country. That made sense because a centrally planned, controlled economy can develop industries comparable in scale and efficiency to those in more advanced market economies.

The new Treasury regulation rests on a fallacious principle which states that if two countries have the same GNP, then it follows that they will have comparable costs. Rather than examining comparable industries, the new regulation compares supposedly comparable economies (e.g., Spain-Poland). Rather than calculating the margin of dumping by comparing export prices of comparable industries, Treasury is now comparing export prices with a constructed value in a comparable economy whether or not the comparable economy has a like industry.

This is contrary to the law's stated preference for comparing prices rather than using a constructed-value calculation. We urge the Subcommittee to rectify this situation in the implementing legislation by requiring Treasury to abolish the new regulation and return to that used for 20 years prior to August 1978.

Richard O. Cunningham, Steptoe & Johnson, Washington, D.C.:

After the enactment of Section 205(c) by Congress in 1974, it seemed that the methodology for applying the Antidumping Act to Communist country imports had been settled. Since then, however, the Administration has determined in its own mind that Section 205 (c) as enacted by Congress is overly restrictive and cannot fairly be applied to Communist country imports. There are two issues here:

First, what should be the basis for determining foreign market value when the product in question is not produced anywhere except in the United States and in the exporting Communist country? The legislative history of the Trade Act of 1974 states rather explicitly that the basis of comparison in such circumstances is to be the price at which such merchandise is sold in the United States by U.S. producers. However, Treasury regards this as unfair, and has instead promulgated an incredibly complex regulation requiring a hypothetical cost of production analysis.

Second, where the same type of merchandise is produced in several countries besides the U.S. and the exporting Communist country, which of those third countries should be chosen as the basis for determining foreign market value? Again, the legislative history of the Trade Act states explicitly that Section 205(c) is intended to codify previous administrative practice, and the Customs Service in past cases has invariably looked to that country in which it found a producer of size, complexity and technology comparable to the producer in the Communist country. Here again, Treasury has changed the law, by promulgating a new regulation which requires that foreign market value be determined on the basis of prices in a country "comparable in terms of economic development" to the exporting Communist country. Once, again, the effect of Treasury's change is to slant the price comparisons in favor of the Communist exporters.

The reason that Treasury's new approach has a built-in bias in favor of the Communist exporter requires a bit of explanation. The nubbin of it is that the country in which you will find an exporter comparable in size and sophistication to the Communist exporter is likely to be a country which is more advanced—and therefore in which prices are higher—than in a country "comparable in terms of economic development" to the Communist country. The reason is that the Communist country government often creates an exporter which is larger and more sophisticated than one would normally expect to find in that country. The goal is to earn hard currency by increasing exports, and therefore the government wants as large and as sophisticated a producer as possible. In a free-market economy comparable in economic development to the Communist country, on the other hand, producers would tend to be smaller and less sophisticated, both because the size of the domestic market would not justify a large-scale producer and because low labor rates would make a high degree of automation unnecessary.

In effect, then, the new Treasury regulation has precisely the result which Congress sought to avoid in enacting Section 205(c). What Treasury will rely upon under the new regulation is not the normal prices and costs which would exist if the exporter were located in a non-Communist country. Instead, Treasury will use the significantly lower prices which prevail in a country in which the exporter in question would not normally be located. The net effect of this is to produce a price comparison which is more beneficial for the exporter—more beneficial precisely because of the involvement of the Communist government.

I urge this Committee to correct this perversion of Section 205(c). That can be accomplished by amending the Section to make it clear that enforcement of the Act against imports from state-controlled-economy countries will be predicated on the prices charged by a free market producer whose size and degree of sophistication are comparable to that of the state-controlled-economy producer. A proposal for such an amendment is appended to this Statement.

Beyond this, the Committee should make it absolutely clear to the Treasury Department that the Antidumping Act is to be enforced fairly and objectively, letting the chips fall where they may. Perhaps the most disturbing aspect of the new Communist country regulation is that it is so clearly a response to diplomatic pressures and an implementation of a diplomatic policy of cultivating political and economic relations between the United States and certain Communist countries. Such policies are undoubtedly well-intentioned, and I have no quarrel with them whatsoever. I believe very strongly, however, that such diplomatic and political goals must not be allowed to interfere with vigorous enforcement of the Antidumping Act.

Proposed Antidumping Act Amendment Re Imports from State-Controlled-Economy Countries. To ensure that the enforcement of the Act against imports from state-controlled-economy countries (a) will be predicated upon analysis of prices rather than costs whenever possible, and (b) will be predicated on the prices charged by the producer whose size and degree of sophistication are more nearly comparable to the state-controlled-economy country producer but without the distortion or subsidization inherent in government control of the economy, it is proposed that Section 205(c) of the Antidumping Act (19 U.S.C.

§ 164(c) be amended to read as follows (revised portions italicized):

"If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses and profits *of the producer which is most nearly comparable in size, sophistication and technology to the state-controlled-economy producer, but which is located in a non-state-controlled-economy country, including the United States. Such normal costs, expenses, and profits shall be determined on the basis of*

"(1) the prices, determined in accordance with subsection (a) of this section and section 161 of this title, at which such or similar merchandise is sold *by a person, firm or corporation which is located in a non-state-controlled-economy country including the United States, and which is most nearly comparable in size, sophistication and technology to the state-controlled-economy exporter* either (a) for consumption in the home market of that *non-state-controlled-economy* country, or (b) to other countries, including the United States; or *if no such prices exist.*

"(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, *including the United States*, as determined under Section 165 of this title."

Charles O. Verrill, Jr., Patton, Boggs & Blow, Washington, D.C.:

Section 205(c) Should Be Amended. Last August, Treasury announced a new regulation which contemplates, in the case of most non-market controlled economy imports, the determination of foreign market value by a new, highly complicated and discretionary method which is premised on a hypothetical cost of production analysis. This regulation specifically overruled the Treasury practice which had been in effect for over twenty years and which had been successfully utilized to curb unfair price competition from such non-market controlled economies as Poland, Czechoslovakia, the U.S.S.R. and others. The new regulation, however, will have the likely effect of precluding any effective utilization of the Antidumping Act to prevent such unfair price competition. This is particularly disturbing now that there is a serious possibility that the People's Republic of China and Russia will be granted most favored nation status and the resulting lower tariff rates.

Under the new procedure, Treasury plans to utilize the prices of a similar product in a market economy country as the foreign market value of the non-market, controlled economy product only if the market economy country is "comparable" in stage of economic development to the controlled economy. If prices in a comparable market economy are not available, then Treasury will establish a constructed value by determining the cost to produce the same product in a comparable market economy country using the factors of production (e.g., hours of labor) in the controlled economy. Only if the input factors in the controlled economy cannot be adequately verified will Treasury utilize the U.S. selling price of the domestic product.

AMF believes that this regulation is inconsistent with § 205(c) of the Act and is not a rational basis for determining foreign market value for the following reasons:

(i) The Antidumping Act does not permit Treasury to disregard prices if the market economy is not comparable in stage of economic development to the controlled economy. The price test is preferred under the Act and constructed value has always been employed only if prices are unavailable or less than cost of production.

(ii) There is no adequate basis for determining comparability between controlled and market economies because the economic reporting systems of the controlled economies rely on a different data base than those in market economies. This lack of comparability is apparent from the attached memorandum (Annex A) by Professor Stanislaw Wasowski of Georgetown University. (Omitted.)

(iii) The regulation is based solely on the unsupported presumption that "comparably developed economies have comparable costs and comparative advantages." This presumption is without any foundation in economic theory or fact; a point made (but ignored) in our presentations to Treasury. The lack of any logical basis for the Treasury assumption can be readily illustrated: Belgium and Canada have reasonably comparable per capita GNP and, according to the Treasury assumption, should have comparable costs. This theory has superficial appeal until specific examples are considered. Among the comparative advantages of Canada are abundant iron ore and natural gas which are both necessary to produce iron pellets suitable for electric furnaces. Surely it cannot be argued that it will cost about the same to produce pellets in Belgium which has neither iron ore nor natural gas. In fact, the very foundation of world trade is that comparative advantages, even in comparably developed countries, will yield cost advantages and provoke trade.

(iv) Treasury practice in the past has always been to find as a surrogate for the non-market controlled economy producer an industry in a market economy which is comparable to the industry in the non-market controlled economy and to utilize the prices of the market economy producer as fair value. This is a realistic test since a centrally planned, controlled economy can develop industries which are comparable in terms of scale and efficiency to those in more advanced market economies. Moreover, it relies on prices charged in the market place which is the best litmus of value. Under the new regulation, however, the test will rarely be used.

(v) By narrowly circumscribing those cases in which the price test can be utilized, Treasury has effectively established constructed value as the principal determinant of foreign market value in non-market controlled economy cases despite the obvious difficulty of cost calculations for a hypothetical producer. This methodology is prone to error and places an unrealistic burden on the Customs Service. In fact, the General Counsel of the Treasury recently complained to Congress about the "difficulty of determining an integrated manufacturer's cost of producing [a] specific product. . . ." This difficulty will be compounded by the controlled economy regulation where the inquiry is not into an actual producer's costs, but rather involves hypothetical production costs. Constructed cost calculations are also subject to manip-

ulation to achieve a result that is consistent with considerations unrelated to unfair price competition such as sensitivity to diplomatic pressures.

(vi) Finally, Treasury ignored the admonition in the Senate Finance Committee Report on the 1974 Trade Act that if prices are not available in a third market economy country, then prices in the United States should be utilized in controlled economy cases. Treasury rejected this argument on the ground that it would be necessary to add the cost of importation and transportation to the U.S. price which would exclude the controlled economy producer from the market. This is not a credible argument since Treasury could, under the circumstances of sale adjustment provision of the Act, make allowance for those costs and, as a result, the product produced in the controlled economy could be sold in the United States at a price equivalent to that charged by the domestic producers. Indeed if the product is produced only in the United States and a controlled economy, it would seem that this is precisely the result that Congress intended.

Based on these arguments, we believe that legislative action should be taken to amend § 205(c) of the Act so as to restore the primacy of the price test in fair value determinations and to ensure that the intentions of the Senate Finance Committee as expressed in the Report on the 1974 Trade Act are fulfilled.

For example, § 205(c) could be amended as follows (new matter italicized):

"(c) If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a), the Secretary shall determine the foreign market value of the merchandise on the basis of the normal posts, expenses, and profits as reflected by either.—

"(1) the prices, determined in accordance with subsection (a) and section 202, at which such or similar merchandise of a non-state-controlled-economy country or countries *including the United States* is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States; or *if prices including those in the United States do not provide an adequate basis of comparison, then*

"(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries as determined under section 206."

Adoption of this proposal would require that fair value be based on prices, including these in the United States, unless the administering authority determines that prices are not an adequate basis for comparison.

There are good reasons to establish price as the primary determinant of fair value, even where it is necessary to locate a surrogate as is the case in controlled economy cases. First, prices in the marketplace may not always reflect total costs. Small or inefficient producers cannot price their product in actual transactions above the general price level and expect to make sales except in monopoly markets. Thus, prices,

even of small producers, reflect "normal costs" since abnormal costs resulting from inefficiencies are borne by the seller who cannot pass them on to the buyer in the form of higher prices. Second, constructed value involves arbitrary minimum levels for general expenses and profits without regard to whether competitive marketplace pricing would allow such elements as a component of price. Finally, transaction prices are less subject to manipulation than are cost calculations with all the variables and allocations that are possible.

Where the product is produced only in the United States and the exporting controlled economy, the use of domestic prices as the surrogate is readily justified. The controlled economy product would be required to reach domestic price levels only if a lower price would (or has been found to) injure an industry in the United States. Since it is likely, where these unique circumstances exist, that the product was designed and produced specifically for the domestic market, an injury producing price should be remedied under the Act. Otherwise, domestic industries serving uniquely domestic markets would be prime targets of controlled economy producers that can disregard costs particularly where foreign exchange objectives are important (as they usually are).

M. Special Problems in Antidumping Law Applied to Perishable Agricultural Products

Morris K. Udall, M.C. (Arizona):

An interpretation of the Act which would require each single sale of produce to exceed cost of production does not square with the reality of agricultural economies."

"Since (Treasury) seems bent on this approach, we in Congress must rewrite the law to avoid a ridiculous and costly result."

West Mexico Vegetable Distributors Association and Union Nacional de Productores de Hortalizas: Patrick F. J. Macrory, Counsel:

The Treasury Department is currently conducting an investigation under the Antidumping Act which, for the first time, requires it to apply Section 205(b) of the Act (the cost of production provision, added in 1975) to imports of perishable produce. To apply the provision in a way that would require each individual shipment of imported perishable produce to be sold at above its full cost of production would be contrary to common sense and the economics of produce growing.

The inability to control short-term output, coupled with the perishable nature of the product and the substantial price fluctuations dictated by market conditions, require the grower to sell whenever he can recover more than the costs of harvesting and marketing. To forbid access to foreign producers when market prices are below full cost, while at the same time U.S. producers are free to continue selling below full cost whenever the market so requires, would be highly discriminatory. It would also hurt consumer interest, by reducing supply and increasing prices. The effect of such a ruling might well be to effectively prohibit all imports of perishable produce.

An amendment to the Antidumping Act, that would authorize Treasury to compare returns to the produce grower with his costs on a realistic basis, rather than sale-by-sale, is needed to avoid these highly undesirable consequences.

Like the original Antidumping Act, Section 205(b) seems rather clearly directed toward industrial products. It cannot logically or reasonably be applied to imports of perishable produce, at least on a sale-by-sale basis. For, whatever the standards applicable to the industrial sector, it is perfectly normal and accepted practice for produce growers to sell below full production cost at certain times of the season. The distinction, of course, is an obvious one. In the first place, supply and demand in agriculture are much less predictable, so that market prices fluctuate far more substantially than in the industrial sector. Additionally, unlike a manufacturer of, say, television sets, the produce grower cannot slow down or stop production in the short run, and he cannot store his product. His access to alternative markets is strictly limited by shipping time. So long as he can recover more than his costs of harvesting and marketing, he must sell his crop, in order to recover at least part of his fixed cost.

What will be the consequences of a finding that sales of imported produce below cost, even though no greater in extent than is normal for this kind of business, constitute dumping? There are two alternatives, each highly unpalatable:

(a) Imports of Perishable Produce Will Cease.

(b) An Administrative Nightmare.

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Proposal A. Section 202 of the Antidumping Act, 1921 (19 U.S.C. Sec. 161), is amended by adding at the end thereof the following new subsection:

"(d) No dumping duties shall be levied, collected and paid on the importation of perishable agricultural merchandise where such sales below foreign market value (or, in the absence of foreign market value, constructed value) as have taken place have occurred as a result of the actual or imminent deterioration of the merchandise."

Proposal B. 1. Section 202 of the Antidumping Act, 1921 (19 U.S.C. Sec. 161), is amended by adding at the end thereof the following new subsection:

"(d) No dumping duties shall be levied, collected and paid on the importation of perishable agricultural merchandise where, in the absence of foreign market value, the Secretary of the Treasury determines that (1) the volume and duration of sales below constructed value have been no greater than occur in the ordinary course of trade in perishable agricultural merchandise, and (2) within a period of time that is reasonable in the ordinary course of trade in perishable agricultural merchandise the revenues received by the producer on its sales of such merchandise to the United States have enabled it to recover:

"(a) all costs incurred in producing such merchandise;

"(b) an amount for general expenses and profit as defined in Section 165(a)(2) of this Act; and

"(c) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing such merchandise in condition, packed ready for shipment to the United States."

2. Section 205(b) of the Antidumping Act, 1921 (19 U.S.C. Sec. 154(b)) is amended by inserting the following language between the second and third sentences thereof: "In the course of making such a determination in a case involving perishable agricultural merchandise, the Secretary shall take due account of the fact that sales at less than cost of production may be a part of the ordinary course of trade in such merchandise, and he shall not disregard sales made at less than cost of production where he determines that (1) the volume and duration of such sales have been no greater than occur in the ordinary course of trade in perishable agricultural merchandise, and (2) within a period of time that is reasonable in the ordinary course of trade in perishable agricultural merchandise, the revenues received by the producer on its sales of such merchandise in the home market, or, as appropriate, to countries other than the United States, have permitted it to recover all costs incurred in producing such merchandise."

An alternative would be to incorporate language similar to that appearing in Section 1(a) of the Robinson-Patman Act (15 U.S.C. § 13(a)), an anti-price-discrimination statute that is the domestic counterpart of the Antidumping Act:

"[N]othing herein contained shall prevent price changes from time to time when in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods . . . ."

N. Miscellaneous Proposals and Comments

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research:

There should be no requirement for posting bonds to enforce rights.

The proposals adopt a concept of "regional industry" which is unduly restrictive and is worse than existing ITC interpretations.

Under the proposals, the concept of "fair value" would be replaced by definitions of "foreign market value" and "U.S. Price." Since the definitions are not provided, comment is not possible. This proposal obviously could change our Antidumping Act in a fundamental way, and full details of the proposal should be provided immediately.

Since many of the antidumping proposals track the countervailing duty proposals, the AFL–CIO's comments regarding the latter should also be considered, where applicable, in the context of the antidumping proposals.

The proposals permit the government to self-initiate a dumping investigation; but they should require such action in appropriate cases.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs:

Anti-Dumping Code. Article 12 of the International Anti-Dumping Code provides for anti-dumping action on behalf of a third country by an importing country, on application of the third country.

Domestic implementation of this provision would give the United States recourse when U.S. export markets are lost as a result of dumping by another country's exporters into markets outside the customs territory of the United States.

So far we have seen no attempt to draft language to implement this provision, and we urge the Congress to do so.

With respect to other recommendations for domestic anti-dumping procedures, we endorse the proposals of the AFL–CIO.

CUSTOMS VALUATION CODE

Emergency Committee for American Trade: Lawrence C. McQuade (Senior Vice President, W. R. Grace & Co.)

ECAT supports these codes as well. The manner in which imports are valued for customs purposes affects the level of import protection. The current array of import valuation and licensing systems used by governments is, in many instances, sufficiently bewildering to discourage or impede international trade. The United States, for example, has nine different bases for determining customs value. By establishing five agreed methods of determining customs value, the valuation code provides the international trading community a welcome service.

American Importers Association: Richard A. Maxwell, First Vice President

AIA has worked closely with our negotiators in Geneva in order to develop a new valuation system. U.S. law should be amended to give full effect to the new Valuation Code which is based on "transaction value" and rigidly prescribes the manner and extent to which Customs authorities may deviate from this standard.

American Paper Institute and National Forest Products Association: J. Stanford Smith (on behalf of both organizations) (Chairman and Chief Executive Officer, International Paper Company); and Dr. Irene W. Meister, Vice President, International Affairs, American Paper Institute

The new code on customs valuation promises to decrease any uncertainty in export valuation and thus encourage more companies to enter the export field.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.)

If fully implemented, the new customs valuation code will provide significant benefits to U.S. exporters who now face arbitrary uplifts under many countries' valuation systems. U.S. implementing legislation should further clarify certain interpretative notes to the code. The Joint Industry Working Group on Customs Valuation, on which the Chamber is represented, has made specific recommendations on implementing legislation.

Joint Industry Working Group: (Richard D. Langer, Vice President, Control Data Corp.; Saul L. Sherman, Rivkin, Sherman & Levy; Irving Levine, Director, International Tariffs and Trade, NCR Corp.; James R. Gorson, Director, Facilitation, Air Transport Assn. of America)

We urge that draft legislation be made public for appropriate review as soon as possible. However, certain key points are worth mentioning:

1. The General Note on Generally Accepted Accounting Principles should be reflected in the legislative language.

2. The following elements of the Interpretive Notes should be reflected in the legislative language:

—Note to Article 1—all.

—Note to Article 1.2—Paragraph #1, with succeeding paragraphs re-phrased in legislative language.

—Notes to Articles 2 and 3—Paragraph #2.

—Note to Article 5—Paragraphs #5, #6 (with "relevant" in the last sentence being supplemented by "objective and quantified"), #7, #8 and #9.

—Note to Article 6—Paragraphs #2, #3, #4, #5 (with "relevant" in the final sentence being supplemented by "objective and quantified"), #6 (as an addition to our later noted necessity for the inclusion of Article 16 in the statute), #7 and #8.

—Note to Article 8—Paragraph #1, #2, #3, #4 (with the addition that "Customs may not require that more than the cost or value of that portion of the estimated useful life of the tools, dies, molds, and similar items consumed in the production of the goods being valued be added to the price paid or payable to determine their customs value."), #5, #6, #11, #12, #13 and #14 (first sentence).

The extent to which the above parts of the Interpretive Notes should be set forth in the sections providing for the valuation systems or in a definitions section should be determined as the legislation is developed.

3. It appears preferable that Article 7 be treated as a separate value approach in the hierarchy, rather than an as amendment to Section 500. Section 500 provides Customs with the authority to appraise merchandise, and is not and should not be a basis of appraisement. Accordingly, we emphasize the need for also rewriting Section 500. The current law is overly broad and tends to mislead customs field offices with its apparent mandate to use "all reasonable ways and means" to appraise goods, rather than the valuation statute. The field has too often used Section 500 as the basis for appraisement, resulting in the need for corrective action by Customs Headquarters and the Courts.

4. Article 8 and its Interpretive Notes dealing with royalties and assists require clarification. We suggest adding the following wording to the text permitting additions for royalties and license fees:

"Royalties and license fees related to the production of the goods being valued which the buyer is required to discharge directly or indirectly as a condition of the sale of goods for export to the United States and to the extent that such royalties and fees are not included in the price actually paid or payable."

In order to eliminate serious administrative problems arising under Article 8.1 (b) (iv) clarification is needed. We recommend the following language in the paragraph succeeding that providing for adjustments under Article 8.1 (b) (iv):

"The phrase 'undertaken elsewhere than in the country of importation' does not include assistance provided outside the country of importation incidental to work undertaken within the country of importation."

5. Price adjustments anticipated at the time of importation should be reflected in the Transaction Value, even though only ascertained later. Adjustments to Transaction Value should be permitted where the

price's based in whole or in part upon the proceeds of resale in the U.S. even though resale price is not known at the time of importation.

6. The right provided by Article 16 should be guaranteed by law. Existing United States law affords importers the domestic remedies—both administrative and judicial review—called for by the Valuation Agreement. (These remedies are not now generally available abroad, but will become available as a result of this Agreement.)

Appropriate provision will be required regarding United States participation in the international machinery called for in the Agreement for resolving valuation disputes. Of special important is provision for assistance to American exporters in obtaining the treatment to which they will be entitled under the Agreement. This assistance will involve the dispute resolution machinery as a last resort, but the first resort, and one we hope will also receive strong support from the Congress, will be assistance to other countries which seek help in training their customs officials to understand any apply the Agreement as its authors intended it to be applied.

Because of our extensive resources (both manpower and machinery) and the comparative lack thereof in any other countries, some of our trading partners are likely to follow the U.S. lead in implementing the Agreement. Consequently, the manner in which we implement the Agreement, to apply to imports into the U.S. is likely to be reflected in corresponding treatment for exports when they arrive abroad.

STATEMENT OF ADMINISTRATIVE ACTION

The Joint Group has had an opportunity to review an early draft of the Statement of Administrative Action. Overall it reflects our understanding of the proper administration of the Agreement. However some classifications are needed:

A. *Transaction Value.*—Changes in price subsequent to arrival determined in accordance with procedures specified before importation should be taken into account in determining transaction value. For example, contracts with Italian machinery manufacturers often require price adjustments based upon costs incurred prior to shipment that are not known until after shipment. The basis for making these adjustments is usually spelled out in the contract.

We suggest that the example of indirect payment be replaced by one which refers to the situation where an importer negotiates a price reduction as a means of amortizing a debt owed him by the seller, e.g., because of prior shipments of defective merchandise. This is not an infrequent occurrence, particularly where the exporting country maintains currency control regulations and, therefore, the seller finds it difficult to obtain authority to make refunds for such purposes on a timely basis. In these circumstances importers frequently negotiate price reductions as a means of collecting the debt. This suggestion is made not because the example in the draft is incorrect, but because the suggested example is more concrete and is one with which importers and customs officials are familiar.

B. *Adjustments.* 1. *Buying Commissions.*—We are concerned that the description of a buying commission is unnecessarily narrow. We believe that attempts to re-define buying commissions should be avoided. We suggest that the term buying commissions be described

as having the same meaning it has under current law as interpreted by the customs courts.

2. *Royalties.*—We believe that the intent of the Agreement is to assess duties on royalties consistent with current U.S. law. To accomplish this, we suggest the following language:

"Adjustments must also be made for royalties and license fees related to the production of the goods being valued, that the buyer must pay, either directly or indirectly, as a condition of sale for export to the United States to the extent that such royalties and fees are not included in the price actually paid or payable.

"The royalties and license fees include, among other things, payments in respect to patents covering processes required to produce the goods, but not to royalties paid for the use of trademarks and copyrights, which enhance sales rather than the product and are selling expenses rather than part of the cost of production. However, the charges for the right to reproduce the imported goods in the United States or for the right to manufacture in the United States with the use of imported goods shall not be added to the price actually paid or payable for the imported goods in determining the customs value. The right to reproduce imported goods is understood to cover the following classes of merchandise: original or copies of artistic or scientific works, original or copies of models and industrial drawings, prototypes and biological species.

"Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods."

3. *Inland Charges.*—We suggest that language be added making it clear that whether merchandise is to be appraised on an ex-factory or F.O.B. basis depends upon the terms of the transaction. This point is implicit in the Statement that we believe that it should be explicit. We suggest that "containerization" be added to the list of charges not included as part of value. This is consistent with current Customs practice. Finally, we suggest that language be added specifically excluding import brokerage fees from value.

C. *Generally Accepted Accounting Principles.*—We recommend that the discussion of Generally Accepted Accounting Principles ("GAAP") be covered in a separate heading. The use of GAAP is a cardinal principle of the Agreement and we believe it is of sufficient importance to warrant separate treatment.

D. *Assists.*—The treatment of assists should include a statement that assists are to be valued in accordance with their "useful life." It should also be made clear that multiple dutying of assists is not permitted. We understand that some believe that this latter point is included in the concept of "useful life." We suggest that the connection is not a necessary one and recommend that the prohibition against multiple dutying of assists be covered separately.

E. *Transaction Value of Identical and Similar Goods.*—We believe that the discussion of "identical goods" and "similar goods" is vague. We suggest the following language:

"Goods shall not be regarded as "identical goods" or "similar goods" where on the one hand goods incorporate or reflect engineering, development, art work, design work, plans and sketches for which no adjustment has been made because such elements were undertaken in

the United States, and on the other hand, adjustments reflecting similar intangible assists were made because such elements were undertaken outside of the United States.

F. *Sequential Order and Importers Options:* 1. *Options.*—We object to the requirement that an importer make an election between deductive and computed value at the time an entry package is presented. Such a requirement presupposes that in many situations transaction value will be inappropriate, and will predispose Customs officials to disregard transaction value. A primary goal of the Agreement is to require the use of transaction value wherever possible and to discourage arbitrary use of other valuation methods. It is our belief that the proposed wording encourages disregard of transaction value. Accordingly, we believe that in the few instances where transaction value will be inappropriate, the importer should be allowed to choose between deductive and computed value at the time he is informed by the appropriate Customs official that transaction value will not be used as the basis of customs valuation. This could be accomplished through the use of existing mechanisms, specifically Customs Form C.F. 29, Notice of Advice.

2. *Statement of Validation.*—We believe it unwise to require that importers desiring a written explanation of the basis of valuation from the Customs Service make that request at the time of entry or as part of the entry package. We believe that many if not all importers will, as a matter of course, make the request, placing an unnecessary burden on the Customs Service. It would be far more efficient to permit an importer to make a request at a time prior to liquidation becoming final. thereby limiting requests to situations where the information is necessary.

G. *Computed Value.*—The Group firmly believes that the treatment of the calculation of computed value should be reexamined. It is our clear understanding that in calculating computed value appraising officials will be required to rely upon GAAP in the country of exportation. Indeed, this point is explicitly made earlier in the Statement. The Statement as now drafted sets forth virtually verbatim the current method of computing Constructed Value. We believe that this is inconsistent with both the spirit and letter of Article 6 of the Agreement and suggest strongly that this entire section be redrafted. Principles established by the Customs Service in calculating Constructed Value under different law, and often requiring duplication and unnecessary additional accounting and record keeping should be avoided. Elimination of such burdens has been basic to the spirit of the negotiations leading to the Agreement.

H. *Nominal Value.*—Several years ago, Customs of necessity established the concept of "nominal value" for business records (which are generally duty free) and a limited number of other items. The Agreement does not change the necessity for this concept and it seems appropriate to confirm it in the Statement. The relevant Treasury Decision should also be expanded very slightly to facilitate the importation of such records for production for export, because current limitations create difficulties in this regard.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

Right of Appeals.—Section 516 of the Tariff Act of 1930, which

permits an American "manufacturer, producer or wholesaler" to appeal a Custom determination should be amended to extend the same right to interested unions. U.S. producers and workers should be able to appeal under the code.

Relationship Between Or Among Codes.—U.S. laws relate customs valuation (i.e. price) to dumping and subsidies, etc. The code may not be used to attack dumping. The law should indicate the connection. Otherwise, many suits may be needed to process a claim.

Precedent of U.S. Laws.—An international group should not prevail over U.S. Customs law, but the code apparently puts an international GATT council in charge. Under the code, the U.S. effectively agrees to take no action until GATT rules on disputes.

Related-Party Transactions.—Implementing legislation should require Customs to closely scrutinize related-party transactions before accepting transaction value as the customs value. The burden of proof should be on the parties to the transaction, and Customs should be required to obtain specified types of information before accepting transaction value in a related-party case. Where the buyer and seller are related, market value should be the test value.

Customs should be required to obtain the information needed to identify the relationships between parties to a transaction and producer.

Non-market economies.—Valuation of goods from non-market economies has often been unsatisfactory under existing practices. This should be clarified, and the legislation should be specific on this point.

Less Developed Countries.—No special and differential treatment for less developed countries is justified. Customs value should be true value, especially since less developed countries are given tariff concessions under GSP.

A. American Selling Price

Passaic Color and Chemical Co., Paterson, N.J.: Fred H. Hummel, President; Oil, Chemical and Atomic Workers International Union (AFL-CIO), Local 8-406 (N.J.): Eugene Wyatt, President

If any time duty recovery drops per unit, taking into account reasonable variables, on a competitive dye, this would trigger a reversion to the ASP duty equivalent level set at the time the converted rates were set, in dollars, taking inflation into account.

American Color & Chemical Corporation (Charlotte, North Carolina): Julius Goldman, Industrial Sales Manager

We have received a copy of converted rates from the International Trade Commission which will go into effect if ASP is eliminated. The exchange of these rates in place of ASP, we feel, will not be reciprocal, for the following reasons:

(A) These rates were computed based on imports of dyes for the year 1976. If you will refer to USITC publication 828, dated August, 1977, showing imports of Benzenoid Chemicals and Products for 1976, you will notice it only includes approximately 85 percent of all imports. Considering the number of import entries not fully finalized at the time of computation of converted rates, it certainly could not be considered completely accurate.

(B) The number of competitive dyes (duty base on "American Selling Price") accounts for 45.8 percent of the total quantity and 28.2 percent of the total invoice value of all imported dyes. How could the International Trade Commission compute rates which would yield equivalent protection, on these dyes.

(C) We have tried to verify whether any of these rates would yield equivalent protection as we presently obtain with ASP. In order to do so, foreign export prices had to be obtained. This was not possible since dyestuff producers in Europe, Japan and India do not publish price lists. This was verified by our embassies in these countries.

Rubber Manufacturers Association, Footwear Division: Mitchell J. Cooper, Counsel

I do think it important for this Committee to recognize the inherent protective nature of ASP, and to recognize that this cannot be compensated for by a simple arithmetic conversion into an ad valorum rate. A 1976 International Trade Commission staff report listed the following unique features of ASP:

1. It provides for a duty increase on a given imported item at such time as the domestic industry produces a directly competitive item.
2. Under ASP the amount of duty changes with price adjustments by domestic manufacturers, thus providing for a flexible tariff.
3. Under ASP a change in the export price by a foreign supplier has no effect on the duty.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

Revision of Tariff Rates Subject to ASP.—The Congress should seek documentation of the assertion that tariff rates for TSUS items currently subject to American Selling Price valuation are being adjusted to provide "substantially equivalent" protection.

B. F.O.B. Versus C.I.F. Valuation

American Importers Association: Richard A. Maxwell, First Vice President

F.O.B. v. C.I.F. It has been proposed that the United States change its method of Customs valuation from F.O.B. to C.I.F. We recommend that the F.O.B. basis of Customs valuation be retained because imposition of C.I.F. would discriminate between suppliers, distort trade patterns, discriminate between U.S. ports, and increase costs to the consumer. In addition, any such change would require compensation to our trading partners which could be achieved only through a whole new round of tariff-cutting negotiations.

Emergency Committee for American Trade: Lawrence C. McQuade (Senior Vice President, W.R. Grace & Co.)

We understand that thought is being given to changing the FOB basis of import valuation used by the United States to a CIF basis. We oppose this since by so raising the effective level of U.S. import protection a major renegotiation of the U.S. tariff schedule with all of our trading partners would be required.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.)

Apparently, some consideration is being given to switching the basis of U.S. customs valuation from F.O.B. to C.I.F. While either method is allowed under the code, we believe it would be a mistake to attempt to make such a

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

The time to shift to the same method of valuation other nations use—c.i.f.—is long overdue.

change at this time. Aside from any questions of port, exporting country or mode of transport discrimination, adopting C.I.F. would require reopening the complex tariff rate negotiations which have just been completed. U.S. tariff levels would have to be adjusted to compensate for the different valuation method.

National Customs Brokers and Forwarders Association:
M. Sigmund Shapiro, Vice President and Director;
Morris V. Rosenbloom, Director, Washington Office

We recommend that the F.O.B. basis of Customs valuation be retained with a uniformity of definition that either encompasses an ex-factory price or an F.O.B. port of export price, but not both. We feel that imposition of C.I.F. would discriminate between suppliers, distort trade patterns, discriminate between U.S. ports and increase costs to the consumer. We also believe that any such change would require compensation to our trading partners which would entail a whole new round of tariff-cutting negotiations.

GOVERNMENT PROCUREMENT CODE

Westinghouse Power Systems Company: Gordon C. Hurlbert, President

Until European nations subscribe to the new Government Procurement Code and thus agree to open their markets for large electrical equipment to American and other foreign bidders, and until Japan simply agrees to open its market for this equipment to us and others, the U.S. should (a) increase the Buy American differential rather than merely retaining present modest differential rates, and (b) make no tariff reductions on these products.

Electronic Industries Association: Jane P. Davis, Chairman, International Business Council (Assistant Vice President, GTE Corp.); Peter F. McCloskey, President; and Jonathan H. Lasley, International Marketing Consultant

Negotiations with the Japanese are now going on, with strenuous efforts being made to open Nippon Telephone and Telegraph procurement to competitive bidding. We still hope this can be attained. We further hope that discussions with our European trading partners will continue toward the goal of making their communications entities also part of the free market process.

Congressional Steel Caucus Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana) and Barbara A. Mikulski, M.C. (Maryland)

The Caucus recommends that "federal procurement practices . . . be undertaken with utmost care to assure that other signatories to the Government Procurement Code are abiding by that Code's provisions in operating fair, open, and rational bidding systems," and "that some additional negotiations . . . be undertaken to gain greater access to Japan's procurement market."

Semiconductor Industry Association: George M. Scalise (Vice President-Administration and International Operations, Advance Micro Devices, Santa Clara, Calif.); Stanley Nehmer, Consultant; Peter B. Archie, Counsel

We respectfully submit that execution of the MTN Government Procurement Code between the United States and Japan would be inappropriate until such time as we have tangible evidence that Japan has in fact opened both its private sector and public sector markets to our high technology products.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

1. The legislation should prohibit non-signatory countries from access to bid on U.S. government procurement, and should limit the bidding of signatures to the specific entities covered by the code.

2. A clear rule-of-origin language should be incorporated so that signatory countries can be the source of supplies for the U.S. market.

3. Specific language should exempt state and local "Buy American" laws.

4. Foreign governments procurement requests should be listed in *Commerce Business Daily.*

5. The implementing legislation should be for a two-year provisional basis and should provide that it does not go into effect before January 1, 1981, the date indicated in the Code.

6. The implementing legislation should spell out the machinery for U.S. withdrawal, which is provided for in the code upon 60 days notice.

7. A special overall legal caveat should assure that the implementing legislation amends existing law only where specific amendments occur and it should clearly state that no other domestic legislation is affected until Congress specifically amends such domestic legislation.

8. Provision should be made that there will be no authorization for the reduction of U.S. product standards nor any retarding of prospective improvement of U.S. standards by this legislation.

9. Upon complaint, all participating countries should be required to make available the records and transactions of their state-owned companies.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Hellen Kramer, Assistant to Director of International Affairs

We urge Congress to require agencies not included in the U.S. list of covered entities to refuse to accept bids from all foreign suppliers, unless the item is unavailable domestically. The procuring agency should be required to certify the domestic unavailability of the item, citing the evidence for this determination.

All federal agencies should be required to refuse bids from non-signatory major industrial countries, as defined in Sec. 126(d) of the Trade Act. Further, all federal agencies should be required to refuse bids from all non-market economy countries. For other non-signatory countries, we agree with the administration's proposal to grant the President authority to waive this prohibition:

(a) for countries that apply the code *de facto*, or agree to phase it in on an acceptable schedule:

(b) for countries that enter into a bilateral agreement with the U.S. providing for reciprocal treatment in government procurement, and

(c) for least developed countries, as defined by the United Nations (per capita GNP of less than $250 in 1976 prices).

However, we strongly object to the administration's proposal to extend this waiver authority to agency heads on a case-by-case basis. This isn't a loophole—it's an open-sesame, and the end result will be that the larger and richer developing countries will lack sufficient incentives to adhere to the code.

Because of the conditional most-favored-nation principle inherent in this code, adoption of an adequate rule of origin is crucial to prevent non-signatories from gaining undue advantages. The administration proposal to adopt the current U.S. "substantial transformation" rule would make a farce out of enforcement of this code. This loose rule leaves it to the discretion of the U.S. Customs Service to determine whether an article imported for use by a federal agency contains

sufficient value added in the exporting signatory country. It is quite conceivable that the Customs Service would certify an article although 75 percent of its value originates in one or more non-signatory countries.

We urge the Congress to provide that at least 50 percent of a product's value must originate in a particular signatory country in order to be considered as a product of that country. In this regard, the European Community must not be treated as a whole, since E. C. members have not offered identical lists for covered procurements.

For imports, the U.S. Customs Service should be required to verify the origin of a product. For U.S. suppliers, the procuring agency should be required to verify that at least 50 percent of the product's value is of domestic origin. For contracts granted to U.S. firms under various preference schemes, however, Congress should require that the domestic content be at least 75 percent. This provision would apply primarily to small and minority-owned businesses. Its objective is to maximize the domestic employment opportunities generated by government procurement, without being unduly restrictive.

An appropriate office of the U.S. Government should be designated to receive complaints from firms, trade associations, labor unions or groups of workers concerning alleged violations of the rule of origin and other unfair trade practices in violation of domestic law and the Agreement on Government Procurement.

Emergency Committee for American Trade: Lawrence O. McQuade (Senior Vice President, W. R. Grace & Co.)

Undoubtedly, the provisions of the standards code will conflict with some U.S. regulations adopted for public policy reasons. One case, for example, involves U.S. laws and regulations that would require foreign chemical producers to disclose valuable proprietary information in order to market their products here. We recommend that U.S. laws and regulations in conflict with the code be reviewed and that considerations of the importance of international trade cooperation be given due weight.

Signatories of the standards code agree not to allow standards, testing and certification systems to be adopted in a way that would create unnecessary obstacles to international trade. While the obligation applies only to national governments, it is hoped that local units of government and also private bodies that set standards would comply with the purposes of the code. As with the government procurement code, all standards and rules of certification systems would be published and thus open to public scrutiny. We in ECAT welcome this code and recommend approval by the Congress.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

1. The code should not be able to supersede federal or state regulations.
2. The U.S. government should be able to take unilateral action to improve or impose its standards.
3. The test of violation of the code should be the adoption of a standard designed to discriminate against imports—not merely the fact that a standard has the effect of interfering with trade.

Consumers Union: Mark A. Cymrot, Attorney

1. The Code and the implementing legislation should not prevent the taking of necessary measures within the United States for the protection of health, safety, the environment and consumers.
2. The term "unnecessary obstacle to international trade" should be defined as a standard or certification system that discriminates against foreign products and is more restrictive than necessary to accomplish its purpose.
3. The Code's reference to "deceptive practices" should be defined to include "unfair or deceptive" practices under § 5 of the Federal Trade Commission Act and also to include the other consumer protections presently available in U.S. laws. To avoid clarifying this point is to invite extensive litigation.

American Paper Institute and National Forest Products Association: J. Stanford Smith (on behalf of both organizations) (Chairman and Chief Executive Officer, International Paper Company); and Dr. Irene W. Meister, Vice President, International Affairs, American Paper Institute

The key word of the new GATT standards code, as we understand it, is "transparency." In other words, standards in all their many forms can no longer be trade barriers. When standards are formulated by individual countries, the signatories to the code will have a chance to object, if their effect will be detrimental to trade. We believe that it is indeed a great step forward in diminishing trade distortions.

4. The domestic administrative apparatus set up to review various U.S. Administrative agency standards which are alleged to be unnecessary barriers to trade should be as simple as possible and should not constitute a disguised means for executive branch management of the independent agencies established by Congress.

STR's March 29 proposal contained a provision for an interagency committee to review complaints concerning U.S. standards. If a U.S. standard should be invalidated in the international forum, the interagency committee would be empowered to determine what action is taken within the United States including setting aside the U.S. standard. The interagency committee, therefore, is given the power to overrule an agency that originally had authority to establish the standard.

The interagency committee should be empowered to set aside a U.S. standard only after public comment under the Administrative Procedure Act, at public meetings under the Government in the Sunshine Act, and only when the standard does not serve a legitimate health, safety, environmental or consumer protection purpose.

5. STR's March 29 proposal contained provision for a central coordinating office within the Commerce Department. The Standards Code encourages the negotiation of international standards. The Commerce Department under the STR proposal would be authorized not only to coordinate U.S. positions at the negotiations of particu-

lar international standards but also to negotiate on behalf of all U.S. agencies. In our view, the Commerce Department should not be authorized to set U.S. policy on all international standards. Various agencies within the United States have expertise in areas of health, safety, environmental and consumer protection, e.g. Department of Agriculture, Federal Drug Administration, Federal Trade Commission and the Consumer Product Safety Commission. The agencies with the expertise in a particular safety area should be authorized to make the technical decisions within their areas of expertise. The central coordinating office can coordinate these negotiations but should not be given substantive authority to set U.S. policy in areas where it does not have technical expertise.

6. The implementing legislation should clearly state that it creates no private rights of action. The Standards Code is a government-to-government agreement. It does not require the United States to give additional rights to private companies. Private rights of action will lead to a proliferation of litigation. This problem can be eliminated by limiting the implementing legislation, like the Code, to government-to-government complaints.

7. Finally, Consumers Union has an organizational concern about the implementing legislation. STR has advised us that the activities of Consumers Union and other similar organizations are not intended to be included within the Standards Code. Yet, ambiguity on this point could lead to unnecessary and chilling litigation in the future. The implementing legislation should define "standard

setting organizations" to exclude organizations that rate products and disseminate information about products to the ultimate consumer.

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs

Congress should draft the implementing legislation to ensure that the Code does not provide an avenue for attacking American standards which, in the judgment of the responsible legislative, administrative, and private regulatory bodies, serve legitimate purposes.

1. The legislation should not contain provisions admonishing U.S. standard-setting bodies to "take account of the effect of domestic regulations on U.S. foreign trade," or prohibiting the adoption of standards which "create unnecessary obstacles" to trade, or any similar requirements. Such provisions would inevitably prove to be impediments to the regulatory process. . . . To foreclose such results, the implementing legislation should not contain any directives or statements of policy which purport to state how American standard-setting bodies should carry out their responsibilities.

2. Injunctions should not be authorized against U.S. standards which a GATT panel has found to violate the Code, even when the administering U.S. agency desires to enforce the panel's decision. Instead, the agency (Special

Trade Representative's Office, or whatever agency is given the authority under a reorganization) should be authorized in appropriate cases to present an international decision to the U.S. standard-setting body which issued the standard in question, for consideration by that body. The regulatory body with responsibility for the challenged standard would then be in a position to determine whether a modification of the standard would be warranted in view of the legitimate regulatory purposes governing the issuance of the regulation in question. If a modification were warranted, it could be made by the body which issued the standard, and which would have the fullest knowledge and expertise regarding the standard.

3. Whatever method is adopted for implementing the Standards Code as it affects U.S. standards, the legislation should state explicitly that the means of enforcement provided in the legislation is exclusive. No general language should be included regarding efforts by the federal government to ensure compliance with the obligations of the Code and/or of the implementing legislation, since such language might be construed to authorize a number of inappropriate courses of action, such as the withholding of federal funds from state, local, or private standard-setting bodies that are deemed to have violated the Code.

4. The legislation should state that it is the sense of Congress that no determination by an international panel is entitled to weight under U.S. law (except as a factor to be considered by the federal government in deciding whether to propose a revision of a standard under the pro-

cedure described in 2. above), and in particular, that no international finding adverse to a domestic standard should be given weight by a U.S. court in determining whether the standard constitutes an impermissible burden on commerce.

5. Finally, we note that the administration's March 9 draft states that not only certain domestic *standards*, but also "certain U.S. *laws*" could be subject to challenge by virtue of the implementation of the Standards Code. The draft states that "these laws would most likely include those that specifically require a Federal agency to discriminate against imported products" (p. 9). We would like to be advised of the laws to which these statements refer, and we hope that the Congress will be alert to any attempt to weaken the enforcement of U.S. laws through a backdoor procedure.

Chamber of Commerce of the United States: *W. D. Eberle* (*Chairman, EBCO, Inc., Boston, Mass.*)

The National Chamber opposes granting the President authority to auction import licenses, except perhaps for oil import licenses and those required under section 22 of the Agricultural Adjustment Act. While this proposal may have merits, we believe that it should be the subject of separate legislation to permit consideration of the impact of an import license system on various programs.

We oppose the adoption of an "automatic licensing system," now or in the future, because it would place an additional burden on business, require the establishment of a new bureaucracy and increased government expenditures, without any perceivable benefits.

American Importers Association: *Richard A. Maxwell, first vice-president*

This Subcommittee is considering a limited grant of discretionary authority to the President to auction import licenses. Any such scheme would place small importing companies at an enormous disadvantage and significantly reduce competition in those products under license. It would increase the wholesale and retail costs of these products. We recommend that such a program not be initiated by the Congress.

The Subcommittee is also considering an automatic li-

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

The proposed legislation should:

1. Direct the President to establish licensing systems to cover different kinds of trade problems. Executive Orders should be limited to what is included in specific statutory language. The U.S. licensing systems should be designed to (a) aid in monitoring all imports; (b) to provide added information related to producers' national origin to the extent possible; (c) to report the name of the actual producer of product abroad so that we would know if product is made by U.S. producer; (d) to make information publicly available under "Freedom of Information Act" without exemptions; (e) provide information on both quantity and value; (f) assure licensing for national security.

2. Clarify the relationship between the licensing code and the customs valuation code so that the legislation does not conflict.

3. Deny licenses for imports on the basis of violation of U.S. labor standards laws with specific prohibition of goods produced by child labor, prison labor or forced labor.

4. Assure that licenses provide fair access to the U.S. market when imported products are restricted for sale in

censing system to monitor imports prior to Customs entry. Such a system would be expensive, difficult to administer, and trade inhibiting. Initiation of automatic licensing at this time would contravene the intent of the Import Licensing Code which seeks to diminish the application of licensing policies.

the U.S. No auction system should be authorized because it would not assure fair access. (Otherwise, for example, a large sugar importer could bid highest to import sugar if it were under quotas. This would add to costs and prevent competition at home.) Auctioning of licenses is, therefore, not appropriate.

5. Make special licensing provisions for non-market economy imports.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.)

Until the safeguards code is completed and it is possible to design U.S. legislation that conforms to its requirements, we recommend that no changes be made in U.S. law.

If however, the Congress does decide to change the six month time limit, now or at a later date, the Senate Finance Committee recommendation for a shortened "fast track" procedure in unusually critical cases is preferable to the initial proposal of this Subcommittee and the Administration that all cases be decided in four months. Again, the key ingredient is availability of information. Four months will be inadequate in complex cases where data is not readily available. A hasty determination would impair the quality of the decision and would be to the advantage of neither the importer nor the domestic producer.

Where adequate information is available, an expedited investigation could provide an injured industry with needed relief sooner. Legislation creating a fast track provision should spell out the criteria for its use. We propose that a decision to conduct an expedited investigation should be granted only when the International Trade Commission has concluded that the evidence presented clearly leads to the conclusion that such an expedited investigation is necessary to avoid irreparable damage to

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs

Our support will definitely not be forthcoming if the domestic implementing legislation does not include in the original package satisfactory amendments to Title II, Chapter 1 of the Trade Act.

Our legislative proposals are as follows:

1. Amend Sec. 201 to provide a fast track procedure.

2. Substitute for the present Sec. 202(c)(1) the following language: "information and advice from the Secretary of Labor on the estimated number of jobs that would be lost in the next five years in the impacted industry, as well as the indirect job losses in supplier firms, if import relief is denied, and the impact on communities in which the industry is located; as well as the adequacy of adjustment assistance under Chapter 2 as a substitute for import relief, and the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance;

3. Substitute for the present Sec. 202(c)(2) the following language: "information and advice from the Secretary of Commerce on the industry's ability to benefit from adjustment assistance in the absence of import relief, as well as on the extent to which firms in the industry have applied

the industry. Among the indicators (others may be appropriate) of irreparable damage would be the convergence of:

(1) a rapid, substantial increase in imports both absolute and relative to domestic production;

(2) a serious, rapid decline in profits or increase in losses; and

(3) plant closings which result in layoffs of a significant proportion of an industry's employees with poor chances of reemployment in the industry.

Having embarked upon a fast track investigation, the Commission must be free to decide to revert to a normal investigation if the information necessary to its decision-making is unavailable or if the Commission decides that the petitioning industry does not, after all, qualify for an expedited investigation.

American Importers Association: Richard A. Maxwell, First Vice President

Expedited procedure and proposed shortened time limits. We recommend that no changes be made in the time limits for the Escape Clause because there is no demonstrated need for either of these proposals. Moreover, while 90 days may be sufficient time to conduct an injury investigation in antidumping cases, parties to those investigations and the ITC are aware of those investigations ahead of time. There is no such advance warning in the case of Escape Clause petitions.

for, are receiving, or are likely to receive adjustment assistance under Chapters 2 and 4, and the probable effects on the industry in the next five years if import relief is denied."

4. Amend Sec. 202(c)(3) to add to the criteria the President should take into account "the national interest in an adequate production base for the article in question."

5. Amend Sec. 202(c)(4) to add the following at the end of the existing clause: "taking into account the effects of import relief on capacity utilization and the attendant effects on production costs and sales prices."

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), and Barbara A. Mikulski, M.C. (Maryland).

Representative John Buchanan testified in support of the Fair Trade Enforcement Act of 1979, which includes provisions for faster action on ITC 201 investigations.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

1. Relief should be available both on an emergency basis

cape Clause investigations, with the result that a mere 90-day or 120-day investigation with a hearing scheduled at the approximate mid-point (six weeks after initiation of an investigation) simply would not give importers and foreign exporters adequate notice to prepare their side of the case or for the ITC to conduct an adequate investigation.

Emergency Committee for American Trade: Lawrence C. McQuade (Senior Vice President, W. R. Grace & Co.)

ECAT hopes that a safeguards code can yet be completed. We believe that it would be particularly desirable to include in it a stipulation that governments report not only official restraints on trade but unofficial ones as well. Under present GATT provisions, so-called voluntary agreements made by governments or worked out among industry groups are not subject to reporting requirements. They should be.

We note that the trade subcommittee has made a tentative decision to shorten the time period for "escape-clause" investigations. We suggest that the subcommittee defer this decision until such time as a safeguards code has been concluded and submitted to the Congress for whatever action might be necessary.

and on a selective basis. The Administration calls emergency relief 'fast track.' A provision for 'emergency' relief should be more specific. The threat of injury should be enough of a test. 'Selective' means that imports flooding in from any given country can be stemmed by granting the right to impose temporary relief on imports from that country temporarily while relief against imports from all other countries is being considered.

2. The rule of law in GATT and in Sec. 201 that relief is available when there is a *threat* of injury is usually ignored, . . . An industry has to be almost totally destroyed before action is taken, if then. The statute should make clear that a threat of injury is important. This can be done with slight additions to Sec. 201.

3. U.S. industries have been lost because of the interpretation of the words 'like or directly competitive' in the test of injury statute. Imports must be the cause of injury to an industry which makes a 'like or directly competitive' product.

The interpretation of like or directly competitive has been so limited by this that the U.S. loses (a) the parts of the industry, (b) the . . . producers, and (c) eventually both. Therefore, the test of "like or directly competitive" should be changed to reflect the need for development of a healthy industry in the U.S.—both upstream and downstream—in the production process.

4. A proposed recommendation should indicate Congressional intent that the health of domestic industries should be promoted rather than the current language in

Sec. 201, which promotes an "orderly adjustment" to foreign competition.

5. No requirement that imports from any one country be the only cause of injury should be allowed. For example, if the U.S. has imports from 10 countries and the 11th country is added and injury occurs, there should be a right to relief.

6. No review of existing cases should be agreed upon. The U.S. needs more effective safeguard action.

7. Failure of other countries to use GATT Article XIX methods for safeguard actions should be prima facie evidence for Sec. 301 action by U.S. (unjustifiable barriers to trade).

8. Imports from non-market economies cannot be viewed as "fair" competition and therefore such trade should be especially monitored and regulated along with "safeguard actions."

Congressional Steel Caucus: Joseph M. Gaydos, M.C. (Pennsylvania), John Buchanan, M.C. (Alabama), John P. Murtha, M.C. (Pennsylvania), Ralph S. Regula, M.C. (Ohio), Adam Benjamin, Jr., M.C. (Indiana), Barbara A. Mikulski, M.C. (Maryland)

The U.S. . . . retain the current statutory causality test rather than adopting the much stricter "principal cause of injury" test.

NON-TARIFF MEASURES, MISC.: WINE GALLON

Commonwealth of Puerto Rico: Carlos Romero-Barcelo, Governor

"The elimination of the wine gallon method of assessment and the proposed 20–30 percent reduction of the foreign rum tariff may seriously threaten the fiscal health of the government of PR and (its) people."

Virgin Islands: Amadeo Francis, Commissioner of Commerce

Testimony made same general points as that of the Governor of Puerto Rico. Statement noted the economic and fiscal problems of the VI, the fact that the rum excise tax return provided $26.8 million to the VI in FY 1979, and that the returned excise taxes were pledged for repayment of a public works bond issue. Testimony stressed that loss of wine gallon method would severely affect competitiveness of PR and VI rums vis-a-vis foreign rums.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

The repeal of a single line item in the Internal Revenue Code concerning taxes on imported liquor will cost jobs and will lead to the closing of certain glass bottling and distillery operations in the United States because the advantage for such operations in this country has been removed. This is a tax change, but it was included in overall negotiations. We urge that this agreement be dropped.

Joint Appearance: Distilled Spirits Council of the United States and Kentucky Distillers Association: John F. McCarren, General Counsel, DISCUS; Heublein, Inc., Farmington, Conn.: Christopher Carriuolo, Executive Vice President

DISCUS is divided on the issue of whether the wine gallon method should be repealed, but is unanimous on the need for domestic relief if it is repealed.

Our proposals for concession may be summarized as follows:

"I. *Extension of Tax Deferral Period ('most important' concession).*—Extend the deferral period for payment of tax on distilled spirits withdrawn from plants (including Puerto Rico and the Virgin Islands) for an additional period of 30 days.

II. *All in Bond.*—All operations at distilled spirits plants (production, storage, bottling) would be conducted under bond, including the right to transfer spirits to other bonded premises. Repeal of recertification tax is recommended only if all-in-bond system is adopted.

III. *Extension of All-In-Bond Concept to Wholesale Level.*—Within one year of extension of the tax deferral period at plants, extend the point of tax payment of distilled spirits shipped in bond to wholesalers (including Control States) who have chosen to bond their facili-

ties and have otherwise complied with relevant government requirements.

IV. *Reform of Federal Alcohol Administration Act.*—A violation of provisions of section 5 of the Act relating to trade practices may be prosecuted as a criminal offense under section 7 of the Act. Most of these "violations" would at the most be subject to civil sanctions if any product other than beverage alcohol were involved. The Act should be amended to make such violations civil only, while retaining criminal penalties for such activities as engaging in business without the required permit.

V. *Designation of Bourbon as a Distinctive American Product.*—A commitment should be made by the government to support industry efforts with the EEC and other foreign government representatives to obtain recognition of Bourbon whiskey as a distinctive American product."

Wine and Spirits Wholesalers of America, Inc. (WSWA), Abraham Tunick, Washington Counsel

WSWA supports recommendations of DISCUS for domestic compensation and notes:

"We must assume that if the "all in-bond concept" for wholesalers is adopted, the implementing law and regulations will allow wholesalers who elect to go "all in-bond" free and unlimited access to his warehouse without "over the shoulder" government supervision and tax payment would be made on the basis of audit on a return system. We understand that this is in full accord with the Comptroller General's recommendation for the "all in-bond concept" for distilled spirits plants. We also assume that surety and structural requirements will be fair and reasonable."

Summary of testimony: Leo Vernon, On behalf of Independent American Whiskey Association, the Ad Hoc Committee, Publicker Industries, and Medley Distributing Company

In the event that wine gallon is eliminated, it is necessary that the Committee alter the method of tax collection on American spirits in order to lessen the severe impact that will result. Vernon asked that legislation allow American distillers to ship their bottled liquors in Internal Revenue bond to wholesalers and allow that the tax be paid only when the goods are withdrawn from bond. Such a procedure, said Vernon, is similar to the tax system imposed on foreign distillers.

Realizing that instituting such a system would take approximately a year, IAWA asked that they be given an immediate additional 30–45 days to pay the tax.

NON-TARIFF MEASURES, MISC. (OTHER THAN WINE GALLON)

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

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2. *Duty on Aircraft and Aircraft Repairs.*—This provision may be included as part of the aircraft code, because the code refers to removing all duties on repairs. The provision would remove the tariff of 50% now charged on the cost of aircraft equipment purchased or repairs made abroad for U.S. registered aircraft. This can affect both production and service jobs in aircraft and many unions will be affected.

3. *Standards of Identity for Pineapple.*—This provision will probably not be in the implementing legislation because the U.S. government has already helped the Malaysian pineapple interests in preparing a petition to amend Food and Drug Administration regulations. This is a matter of concern, because it appears that standards will be questioned by U.S. government personnel—possibly for multinational interests abroad.

4. *Foreign-Built Inflatable Rubber Rafts and Hovercraft.*—This provision involves extensive changes in many U.S. trade and navigation laws to permit importation of foreign-built hovercraft. New U.S. technology is being developed in this industry. It is believed that this provision will be dropped.

5. *U.S. Watch-Marking Requirements.*—This provision would remove the requirement for identifying marking on the face of the watch and make other tariff changes for imported watches. The loss of U.S. jobs and production in watches has continued and the Soviet Union is now selling watches with a Swiss label in the U.S.

6. *Recurring Duties on Railway Rolling Stock and Per Diem Charges for Railroads.*—This would establish a new tariff item for railway rolling stocks to make it possible for Canadian cars to avoid tariffs on such cars and to change the ICC regulation established March 21, 1977 to eliminate the current requirement that certain moneys paid by U.S. railway users be used only for the purchase of U.S.-built railcars.

7. *Agricultural and Horticultural Implements, parts and accessories.*—This would change the tariff classifications to grant zero tariffs on parts of farm equipment and accessories. The accessories include products not necessarily identified as "farm equipment parts"—i.e., anything that goes with a farm implement. Factories that produce parts for farm equipment and accessories for farm equipment will be affected in various parts of the country. Their chances of getting relief

if impacted by imports will be hampered because the statistics on imports will be changed and identification of imports over a period of time will be difficult.

* * * * * * *

9. *Conforming Column 2 Changes for AVE Rate Conversions.*—The tariffs on all items which have "specific duties" (i.e., cents per pound or per unit, such as 5 cents per pair of shoes or one cent per pound of metal) will be changed to "ad valorem equivalents"—i.e. a percentage tariff or 10 percent for shoes under $10). This affects many items, particularly steel products and chemicals. Some may have been cut more than 50 percent. The provision would allow the tariff rates for imports from the countries which do not now receive most-favored-nation treatment (Communist countries) to be conformed with the rates for other countries. The schedule can affect many items.

10. *End-use Classification for Agricultural Machinery and Parts.*—This would authorize new tariff provisions and the lowering of tariffs to zero for farm equipment and parts. Most parts are subject to tariff. End-use classifications instead of descriptive classifications based on what the product actually is (rather than what it is used for) will create a difficulty in establishing the historical patterns of imports of parts for farm equipment. This will be convenient for multinational firms which want to import parts from other countries. It will be more difficult to prove injury from imports.

GATT FRAMEWORK: GSP, GRADUATION, AND SPECIAL TREATMENT FOR LDC's

International Association of Machinists and Aerospace Workers: William W. Winpisinger, President; and Dr. Helen Kramer, Assistant to Director of International Affairs

We regard it as absolutely essential for the implementing legislation to include criteria for granting special and differential treatment to less developed countries, and criteria for graduating countries from LDC status. As part of this domestic implementation, Title V of the Trade Act should be amended to provide for review and Congressional oversight of the Generalized System of Preferences. G.S.P. is a form of special and differential treatment granted unilaterally by the United States without requiring reciprocal concessions, in accordance with a pledge made by the major developed countries in the Tokyo Declaration of 1973.

Sec. 502(b)

Add to the list of countries that shall not be designated: Taiwan, Republic of Korea, and Hong Kong.

Sec. 502(c)(2)

Add to the criteria the President shall take into account in designating any country as a beneficiary developing country: "the country's total value of exports to the United States, balance of trade with the United States, and the share of manufactures in its total merchandise exports."

Sec. 504(c)(2)

Amend as follows: "A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may *not* be redesignated a beneficiary developing country with respect to such article at any time in the future."

Add Sec. 504(f)

"Whenever the President determines that any country has exported to the United States in a given calendar year a total quantity of eligible articles having an appraised value in excess of an amount which bears the same ratio to $200,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1979, then, not later than 60 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country for the purposes of this title."

Sec. 505

Amend as follows: "(b) On or before the date which is 5 years after

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the date of the enactment of this Act, and by March 1 every year thereafter, the President shall submit to the Congress a full and complete report on the operation of this title. This report shall include for each beneficiary country an analysis of how it meets the criteria specified in Sec. 502(c)(2) (as amended) and 502(c)(4), and a review of requests for designation and removal of articles from the eligibility list, the recommendations thereon of the Secretaries of Commerce and Labor, and the final action taken. The first report shall in particular address itself to the reasons for designating Mexico, Brazil, Israel, Yugoslavia and Singapore as beneficiary developing countries.

"(c) The appropriate committees of Congress shall recommend whatever legislative action they deem appropriate in light of the President's report."

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

AFL–CIO supports repeal of Title V of the Trade Act—which grants zero tariffs on thousands of products imported from less developed countries, because it is obsolete. At least, there should be a provision for realistic "graduation" of countries and products.

The United States is the most open area in the world and therefore already grants special and differential treatment to developing countries. But the negotiations also provide "special and differential treatment" for a group of unmanned "developing countries" in each code and in the overall framework of the changes in international rules. We urge the Congress to examine just what the negotiators mean by a "developing country" and to find out the impact of such imports already surging into the U.S. from what often turns out to be highly-industrial nations. Special treatment for needy countries should be tailored to helping people within those countries—not to the creation of more poverty at home and abroad by export-led development at the expense of labor everywhere. Title V of the Trade Act of 1974 should be repealed, because it is obsolete.

Ferroalloys Association: George A. Watson, Executive Director, and Thomas M. Lemberg, Counsel

Furthermore, some GSP countries have abused the privilege afforded by GSP treatment for their U.S. shipments by granting export subsidies which are "bounties or grants" under the countervailing duty statue. Congress should therefore amend the GSP provisions of the Trade Act to withdraw GSP with respect to a product from a GSP country as to which countervailing duties are assessed.

* * * * * * *

The ferroalloy industry has suffered greatly from the duty-free status granted to imports of major ferroalloy products under the Generalized System of Preferences. Although The Ferroalloys Association has filed several petitions with the Office of the Special Representative seeking to have ferroalloy products especially injured by GSP withdrawn from that program, STR has rejected each petition. Further, our industry lives with the continuing threat that STR will some day decide arbitrarily to extend GSP to import sensitive ferroalloys not presently included in that program. Because GSP im-

ports have had a devastating impact upon our industry and because STR has been unwilling to enforce the Trade Act's requirement that GSP not be extended to products that are "import sensitive in the context of GSP," Congress should enact H.R. 3344—a bill to add ferroalloy products to the list of products statutorily exempt from GSP.

International Economic Policy Association: Dr. Samuel M. Rosenblatt, Senior Economic Consultant

In this sense, then, we support the graduation concept, by which the advanced developing countries recognized the necessity of phasing out some of these benefits along with their assuming more of the responsibilities associated with the international trading system.

SECTION 301, UNFAIR TRADE PRACTICES/INTERNATIONAL COMPLAINT PROCEDURES

Chamber of Commerce of the United States, W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.)

The implementing legislation should designate a maximum time period—perhaps ninety days—for a decision on whether to initiate the international dispute settlement procedures.

Ad Hoc Subsidies Coalition: Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc.), and Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott)

Also, *Section 301* of the Trade Act should be amended so that there would be a time limit on the processing of 301 cases and a requirement to take retaliatory action in those cases when foreign subsidies cause trade diversion in the U.S. market or in foreign markets or when those subsidies cause the loss of U.S. export sales.

We understand that Senators Heinz and Dole have proposed that the International Trade Commission become involved at the same time that a petition is filed with the Special Trade Representative. Their investigations would be concurrent and there would be a time limit of up to 10½ months. The ITC would be required to prepare a report for STR on (a) findings of fact and (b) application of the Code to those facts. It seems to us that this is a very good way to handle the matter and we commend it to the Subcommittee's consideration.

International Economic Policy Association: Dr. Samuel M. Rosenblatt, Senior Economic Consultant

You agreed to accept the Senate Finance Committee's recommended provision regarding changes in 301(a) in order to clarify that services, whether or not associated with specific products, are to be protected under Section 301. It agreed to amend that section so that "the term 'commerce' includes services associated with international trade whether or not the trade is related to specific products."

In spite of these recommendations and in light of the historic treatment afforded this problem, however, this change may not be adequate. As long as the term "*associated with international trade*" is used, I fear that a narrow interpretation of the words "associated with" will be maintained by any Administration which wants to evade the issue of services. It would seem better to drop the words "associated with" completely and indicate that "the term 'commerce' includes services in international trade whether or not the trade is related to specific products." This should also be used in Title VI, Section 601 (10) where the term commerce is again defined.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

We urge that the implementing legislation require the U.S. government agencies—the State Department, the Treasury Department, the Commerce Department, and the International Trade Commission (1) to report on foreign government's actions that interfere with U.S. exports—either by violating trade agreements or in any other way, (2) to act to help U.S. export interests in international procedures, and (3) to take whatever retaliatory steps are necessary when U.S. export interests require it.

Cling Peach Advisory Board: W. R. Hoard, Manager

In anticipation of legislative modifications to Section 301, we urge any such amendments should have no adverse affect on cases presently pending under this Section. Specifically, such cases should not need to be refiled. Also, resolution of such cases should take absolute priority over cases filed subsequent to enactment of any new legislation.

California-Arizona Citrus League: William K. Quarles, Jr., President

Section 301 must be modified to insure that the pending cases are prosecuted and resolved within a reasonable time, preferably not to exceed one year.

Millers' National Federation: Wayne Swegle, President

The Millers' National Federation would urge this Committee to specify in its report that pending Section 301 cases will not be adversely affected by the proposed changes to Section 301. The Millers' National Federation should not have to refile its case. Further, Millers' National Federation would ask this Committee to recommend that pending Section 301 cases be taken up by STR in the order in which they were filed.

PRIVATE SECTOR ADVISORS

National Cattlemen's Association: Samuel H. Washburn, Chairman, Foreign Trade Committee

The NCA would like to see the continuation of the private sector advisory committees. However, to function properly they must be given more staff support, latitude and autonomy.

The NCA believes that in the formation of any panels, councils, or government bodies to any of the Codes or Arrangements such as the proposed Meats Arrangements in the MTN package there must be provisions for private sector input and participation.

Agricultural Trade Advisory Committee on Livestock and Livestock Products: Peter E. Marble, Chairman

Spell out boldly and unmistakably that the principal U.S. representatives to international commodity agreements (conventions, arrangements, meetings, etc.) shall be U.S. farmers or their elected representatives.

Finally, a word about the operation of private sector Advisory Committees in the future. Within Agriculture there should be but one Committee. It should be: (1) directly responsible to Congress; (2) advisory to the Administration; (3) subject to its own rules, chairmanship with access to a limited privately directed staff; (4) granted a modest budget for committee member and staff expense for at least two meetings a year. Finally, (5) representation should reflect that of the presently constituted ATAC's in proportion to agricultural production and sales.

American Paper Institute and National Forest Products Association: J. Stanford Smith (on behalf of both organizations) (Chairman and Chief Executive Officer, International Paper Company); and Dr. Irene W. Meister, Vice President, International Affairs, American Paper Institute

Implementing legislation must contain provisions for the continuation of the private sector advisory process with each major industry sector represented. There should be an advisory mechanism to deal with functional issues as well, and each sectoral committee should be given an opportunity to participate when appropriate.

Consumers Union: Mark A. Cymrot, Attorney

Consumers Union supports continuation of the private advisory committees. We urge that additional consumers be brought into the process and included on the industrial technical advisory committees as well as the agricultural technical advisory committees. Presently, consumer representations is only included on the agricultural technical advisory committees. To make this representation meaningful,

consumers should be provided with back-up assistance and funding to support their participation.

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

Legislation should not be so permissive that clear-cut directions are not available. Otherwise, the Administration can avoid getting clear and useful advice from groups who may not agree with potential decisions on policy. The democratic process requires involvement of those who seek changes in, rather than adherence to, U.S. policies.

Section 135 of the Trade Act of 1974 should not broaden the mandate of advisory committees to merely include "support of implementation of trade agreements and other trade policy activities." This language is too vague.

The revision of existing authority to permit advisory committees should not allow so much flexibility and should be geared to effective representation of labor as well as other groups.

Reports to advisory committees by government should be required—not the other way around.

Advisory committees right to supply reports is necessary. A mandate to private countries to provide reports is not advisable.

We need to know what "new committees are envisaged."

The opreation of the Advisory Committee should get much more substantive information rather than information on process of negotiations.

List the exemptions from the provision of the Federal Advisory Committee Act that are contemplated.

Electronic Industries Association: Jane P. Davis, Chairman, International Business Council (Assistant Vice President, GTE Corp.); Peter F. McCloskey, President; and Jonathan H. Lasley, International Marketing Consultant

Establish permanent ISACs and LSACs along the present structural lines—that is, by industry groupings rather than in accordance with Code coverage. These committees should have assured ability to provide advice on all policy, program and negotiating activities.

For advice on purely technical matters—such as the content of specific product standards or deductive methods in customs valuation—these permanent committees should be consulted on the formation of special panels, as and when necessary, and the nomination of individuals known to possess specific expertise in the particular problem area.

In establishing permanent advisory committees, several improvements over the present process are desirable. For example, the committees should have direct access to interagency committees of the Executive Branch. When committee advice is sought, the advisors should be given more current and more complete information on a timelier basis. And, staffing of the committees by the lead administrative agency should be more consistent.

Aerospace Industries Association and General Aircraft Manufacturers Association: George C. Prill, Consultant

The other subject that I would like to stress today is the need for the implementing legislation to set up a strong, flexible system for industry participation in the monitoring, enforcing, consulting and amending process that will follow. If these agreements are to work, we need strong, authorized industry participation at all times and at all levels. Our industry believes we should participate primarily as a sector, but also in the cross-sector discussions on other, more general codes.

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.)

The private sector advisory process should be continued to assist in monitoring the implementation of the MTN agreements and to advise in future trade negotiations. We urge the Administration to give even greater weight to the advice of its private advisors. The implementing legislation should establish advisory committees which are essentially sectoral, and which are as broadly representatives of the entire economy as possible, including wholesalers, retailers, the service industry and consumers, as well as industrial producers, labor and agricultural interests.

While we oppose any reduction in the number or size of the current advisory structure that would eliminate the representation of any major interest, we recognize that some consolidating and streamlining may be necessary. The burden of administering the advisory system can be further reduced by convening the committees only as needed. Functional advisory committees should be established on an ad hoc basis, drawing from the membership of the sectoral committees, as well as outside experts, again ensuring that all relevant interests are represented.

CONTINUING TARIFF-CUTTING AUTHORITY

Chamber of Commerce of the United States: W. D. Eberle (Chairman, EBCO, Inc., Boston, Mass.)

It has been proposed that the President's authority to negotiate additional tariff reductions and nontariff barrier agreements subject to congressional approval under the procedures of the Trade Act of 1974 be continued. While it may be necessary for there to be further negotiations, we would recommend considering the necessary authority in separate legislation after the current unique approval procedures have been tried and can be evaluated.

Ad Hoc Subsidies Coalition; Charles R. Carlisle (Vice President, St. Joe Minerals Corp.), Stanley Nehmer (President, Economic Consulting Services, Inc.), Donald deKieffer (Collier, Shannon, Rill, Edwards & Scott)

This implementing legislation should have nothing to do with the granting of future authority. Whether such authority is necessary is debatable. But if it should be considered, it should be handled in the customary legislative fashion after full hearings have been held.

We strongly urge that the Congress not grant new trade negotiating authority at this time.

CHINAWARE TARIFF CHANGES

Summary of the statements of: (1) American Dinnerware Emergency Committee; (2) American Restaurant China Council and (3) Syracuse China Corporation

The industry witnesses all agreed that the reclassification of china according to use rather than quality would effectively close present loopholes permitting imports to circumvent chinaware tariffs intended to allow American producers to compete with importers in the hotel china market. The new agreements are considered both fair and comprehensive by the U.S. industry.

Current lobbying efforts by foreign producers against the agreements are regarded by U.S. producers as eleventh hour attempts to preserve current unfair loopholes in the law.

Imperial Arts Corporation, Elk Grove Village, Illinois: Irwin Schneider, President

I am here today because, according to all of the information I can obtain, the Administration proposes to raise the duty on the dinnerware that I import from 11 percent to 48 percent—an *increase* in duty of more than 400 percent.

For this astronomical duty *increase* to be part of a package that supposedly is designed to liberalize trade is, in my view, outrageous.

TRADE IN SERVICES

American Federation of Labor and Congress of Industrial Organizations: Rudy Oswald, Director, Department of Research

The Trade Act of 1974 should be amended as follows to protect service jobs and industries:

1. Title II should provide for adjustment assistance for merchant seamen and other service employees.

2. Section 201(a) of the Antidumping Act, 1921, as amended, should be amended by adding after the word "merchandise" the words "or service."

3. All subsequent sections of the Antidumping Act, 1921 containing the word "merchandise" shall be amended in the same manner.

4. Section 406 of the Trade Act of 1974 is amended as follows:

(a) Subsection (a)(1) is amended by inserting after the word "country" the words "*or service provided by a Communist country.*" Subsection (a)(1) is further amended by adding after the word "industry" the words "*or a service provided by a domestic industry.*"

(b) Subsection (a)(3) is amended by inserting after the words "produced by" and before the words "domestic industry" the words "*or a service provided by.*" Subsection (a)(3) is further amended by adding after the word "article" the words "*or service.*"

(c) Subsection (b)(1) is amended by adding after the word "article" the words "*or service.*"

(d) Subsection (c) is amended by adding after the words "Communist country" the words "*or a service provided by a Communist Country.*" Subsection (c) is further amended by adding after the word "article" the words "*or service.*"

(e) Subsection (d)(2) is amended by adding after the words "product of," the words "*or service which is provided by.*"

(f) Subsection (d)(2) is amended by adding after the words "such article" the words "*or service,*". Subsection (d)(2) is further amended by adding after the words "produced by" the words "*or provided by.*"

(g) Subsection (d)(2) is amended by adding after the word "article" and before the word "like" the words "*or a service.*" Subsection (e)(2) is further amended by adding after the words "produced by" the words "*or service provided by.*"

GOVERNMENT TRADE REORGANIZATION, GENERAL

Electronic Industries Association: Jane P. Davis, Chairman, International Business Council (Assistant Vice President, GTE Corp.); Peter F. McCloskey, President; and Jonathan H. Lasley, International Marketing Consultant

Something in the neighborhood of 57 departments, agencies, commissions, etc., etc. have their fingers in this pie. The need to consolidate and centralize this organization is abundantly clear. Now the MTN has focused attention; we strongly hope that steps will be taken:

> either . . . to place virtually all trade administration functions affecting non-agricultural goods in a new Cabinet Department endowed by statute with focal responsibility, authority and accountability for U.S. trade and off-shore investment . . .
>
> or . . . such assignment of authorities should be given to a single existing Cabinet-level Department, which would be subjected to such major reorganization that its sole responsibility and accountability would, as a result, become the administration of U.S. trade, and which would be given appropriate strength and a power base from which to operate in the interest of U.S. industry.

International Economic Policy Association: Dr. Samuel M. Rosenblatt, Senior Economic Consultant

In my view, and that of others to whom I have talked, there is some doubt that a totally new department is either feasible or desirable. It might be better to build on an existing organization, with the Department of Commerce or an expanded STR being logical candidates. If an expanded Commerce Department were selected it should be reorganized so as to deal with the dichotomy that has long existed there between domestically and internationally oriented functions. This reorganization might include the creation within the Department of an agency headed by a deputy or undersecretary of Commerce. In either event, this larger organization could be given responsibility not only for the implementation of those tasks that stem directly from the MTN's, but from other trade-related matters as well. It could consolidate functions such as the Ex-Im Bank and OPIC, plus some Treasury trade enforcement functions, and certainly the staffing of U.S.-foreign trade missions. But I would not want to go as far as some critics—and there are many—of the present performance of the Departments of Commerce, Treasury and State on these matters, and centralize all functions. For that might merely strip key Cabinet departments, who will inevitably continue to have an important role in international economic policy, of their expertise and of those experienced staffers who are sensitive to the need for a coherent foreign

economic policy. Moreover, it can be argued that when a function is centralized, it is most vulnerable to being isolated by its bureaucratic opponents.

* * * * * * *

We would urge Congress to enact, in whatever reorganization bill may become part of the package, that there should be a body—call it a Council on International Economic Coordination or what you will—to be chaired by the President or his designee, comprising State, Treasury, Commerce and Agriculture and Labor as a minimum, with such other appointees as the President may elect.

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